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Welcome to the Expert Witness Journal

Hello and welcome to our April issue, the main focus of which is Negligence.

In the UK, negligence is defined as the failure to exercise the care that a reasonably prudent person would in similar circumstances. To establish negligence, the claimant must prove four key elements: Duty of Care, Breach of Duty, Causation and Loss.

In this issue we cover the main areas of negligence that involve expert witness work including the following articles: Is contributory negligence really a low hanging fruit? By Professor Piers Page, trauma and orthopaedic surgeon at Swansea Bay University; Testing the Evidence, Not the Expert by Dr Carolina Stamboulid, Founder and Scientific Evidence Analyst at Epistémé Scientific Consulting; Judgement, Evidence and Hindsight: An expert's approach to assessing auditor negligence by Divya Devadoss at Crowe; Negligence by Omission: The Role of Professional Curiosity in Mental Health Care by Alexandra Penfold at Somek & Associates and Tender Delays in Clinical Negligence Claims: Court of Session Sets a Firm Line by Rachel Robertson & Jenny Dickson at Morton Fraser MacRoberts.

Maria Morris, Vocational Rehabilitation Specialist and Expert Witness at Circle Case Management discusses how vocational experts guide courts and tribunals in The Architecture of Employability and Dominique Smith at Deka Chambers explains the factual basis of a cross-border clinical negligence claim and provides analysis about the significance of the judgment in Ashamu v Get Slim in Turkey.

To mark the 30th anniversary of Expert Witness as a publisher of experts to the UK legal market we held a conference with Richard Edwards of Richard Edwards Solicitors. You can read all about it on page 5.

Our next issue will be published in June 2026 and will have a medical personal injury focus, if you would like to contribute to this or future issues please get in touch.

Nigel Hector

Publisher

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Richard Pyper has written over 1250 Expert Reports on Clinical Negligence in Obstetrics and Gynaecology in the last 32 years. On Clinical Negligence for claimants and defendants.

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Professor J. Peter A. Lodge MD FRCS FEBS

Recognised internationally as an expert in surgery for disorders relating to the gallbladder, liver and bile ducts as well as weight loss (bariatric) surgery

Surgical training primarily under the guidance of Professor Geoffrey R Giles, and the New England Deaconess Hospital (Harvard Medical School), Boston, USA, under the guidance of Professor Anthony P Monaco.

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Mr Adam Ross

Consultant Ophthalmic Surgeon

MBChB, FRCOphth, FHEA, PGC MedEd, MBA

Adam Ross is a Consultant Ophthalmologist with a sub-specialty interest in cataract surgery, including micro-incision and complex cataract surgery, medical retina and uveitis. He has over 15 years experience in medicine, and was previously the lead for the medical retinal service at the Bristol Eye Hospital, as well as being exceptionally active in clinical research, as the principal and chief investigator on a variety of trials. He carried out his training in Bristol and Cheltenham, as well as visiting fellowships in New York and Washington. He further completed various post-graduate qualifications.

Mr Ross is a fellow of the higher education academy, and continues to be actively involved in teaching of ophthalmologists in addition to allied health professionals.

He has an extensive background in teaching and was the Ophthalmology Postgraduate Training Director and Head of School for Ophthalmology in the Severn Deanery, as well as an Honorary Senior Clinical Lecturer at the University of Bristol.

His expertise lies in cataract surgery, complex cataracts, premium multifocal and toric intraocular lenses, as well as retinal disease. Mr Ross is also involved in research within the subspecialty of retina at Boehringer Ingelheim, and sits on the board of trustees for the charity SRUK (Sight Research UK).

Dr Ross has vast experience in acting as an expert witness. He is familiar with my duties as an expert witness under Part 35 of the CPR and is happy to be instructed as a joint expert witness. He currently prepares expert reports for a number of r eputable medical agencies who are members of the Association of Medical Reporting Organisations.

Dr Ross now has a dedicated medico-legal service with turnaround of reports of 4 weeks with competitive quotes from the outset of instruction.

Dr Ross regularly publishes in ophthalmic literature.

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The Expert Witness North West Conference for Personal Injury experts: A 30th Anniversary Success

by Expert Witness

The Expert Witness Conference on 12th February 2026 with Richard Edwards of Richard Edwards Solicitors was a very fitting way to mark the 30th anniversary celebration of Expert Witness as a publisher of experts to the UK legal market. The venue, Liverpool Athenaeum, was looked on very favourably by both our speaker and attending experts. The actual presentation took place in the historic Athenaeum library, which houses a rare Magna Carta facsimile, and served as a suitable professional backdrop for this learning event. A certificate was awarded to each delegate attending under Continuing Medical Education (CME) guidelines appropriate for Contining Professional Development (CPD) points.

In accordance with these guidelines, we included a question and answer section after the main presentation to encourage interactive learning and again our delegates responded positively to this. We were pleased to see a good selection of experts in attendance, including both experts we publish and also new experts embarking on a journey to become an expert witness. The conference was particularly tailored towards those who could assist the courts in catastrophic and personal injury cases. Richard Edwards was named 'Catastrophic Injury Lawyer of the year' in 2023, and this therefore attracted a very fine cohort of consultants including those in orthopaedics, trauma surgery, burns, internal medicine, midwifery, physiotherapy, occupational therapy, as well as technical consultants in disability accommodation and diving such as: Somek and associates, Mrs Claire Laverty , Richard Guy, David Machin, Professor Ascanio Tridente, Brian Porter et al. The subject covered by Richard Edwards was fascinating and his personal style of delivery provided a very clear and useful takeaway for all.

'A pathway to excellence for experts in the injury sector'

The talk entitled 'A pathway to excellence for experts in the injury sector' was accompanied by a well put-together power point presentation. Richard, who is also a Governor of the Expert Witness Institute, set out three steps that expert witnesses could take to enhance their credibility with the courts and instructing parties. He also outlined how his experience over two decades in serious and catastrophic injury litigation had given him insights into how the courts weighed expert evidence, and the most effective way to deploy it for the benefit of his clients.

Richard started by focusing upon the procedural landscape in which expert witnesses operate, before discussing conferences with lawyers and then reviewing interactions with instructing parties. By

approaching these three aspects with care, he well described how expert witnesses can become trusted, valued and respected by those with which they deal.

Most importantly, he pointed out that, in order to gain credibility with the courts, expert witnesses had to be reliable and adhere to their duties as set out within Part 35 of the Civil Procedure Rules. He explained that this was also the best means to serve the interests of the instructing parties because, if the view of the expert found favour with the court then, on the core issues, the expert and those instructing, were most likely to prevail.

A meeting of experts is a cordial and very 'civil procedure'!

Our experts feedback was excellent. They reported that being an expert witness can sometimes be a solitary occupation and it was therefore good to come out and meet others who are writing reports, and to exchange views. The allocated early evening slot proved particularly helpful to the consultants working in NHS and private hospitals who were therefore able to attend after a day at work and we are grateful for their dedication in attending in the cold February weather: the warmth of the venue, open fire, and historic setting certainly helped everyone feel at ease. Some delegates said they knew of each other but, due to pressures of their work, they rarely had the opportunity to actually meet and discuss matters of mutual interest and that this conference therefore provided an especially enjoyable opportunity to meet up. Expert Witness looks forwards to building on this success for our next conference to further promote discourse and learning between experts and law firms in a fruitful manner. Lawyers and experts interested in presenting and attending future events do, please, contact us at; **info@expertwitness.co.uk**

A Cautionary Tale: Clinical Negligence Experts and the Importance of Understanding the "Bolam" test.

by Bond Solon.

A recent High Court decision highlights the critical importance of expert witnesses in clinical negligence cases having a sound understanding of the "Bolam" test. While the test is not strictly determinative, a lack of familiarity can significantly undermine the credibility of their evidence.

1. What is this new pilot scheme?

In Tarrant v Monkhouse [2025] EWHC 2576 (KB) the claimant brought a negligence claim following complications from bariatric surgery. Shortly before trial, the pleadings were amended to narrow the scope of allegations, resulting in a liability-only trial focused on breach of duty and causation.

Both parties instructed bariatric surgery experts. During cross-examination, the claimant's expert was questioned about their understanding of the "Bolam" test, which had been referenced in their report.

2. The Outcome

HHJ Simon stated that the "inability of an expert witness to recite the Bolam test by heart" is not "determinative of the value" of their opinion.

However, in this case, the claimant's expert demonstrated a lack of basic understanding of the legal framework governing clinical negligence, which significantly undermined his credibility. The judge ultimately preferred the defendant's expert evidence.

3. Specific Judicial Criticisms

HHJ Simon identified several issues with the claimant expert's evidence:

- **Inconsistent terminology**, making the report difficult to follow.
- **Lack of a coherent rationale** for the opinions expressed.
- **Inadequate understanding of the Bolam test**, as revealed during cross-examination.
- **Failure to engage adequately with the opposing expert's views**, leading the judge to favour the defendant's evidence.

4. What can experts learn from this case?

This case serves as a reminder that expert witnesses in clinical negligence cases must not only comply with the requirements of CPR Part 35 and Practice Direction 35 but also demonstrate a clear understanding of the legal principles underpinning their role—particularly the Bolam test.

Our Clinical Negligence Essentials Part 1: substantive legal principles and case law for the expert witness course has been specifically designed for clinical negligence expert witnesses – ensuring that they understand and are up to date with the core legal principles that underpin clinical negligence litigation. One of the key learning outcomes of the course is breach of duty and standard of care, with specific reference to the legal tests applied in Bolam, Bolitho and Montgomery.

Please visit the Bond Solon website for details of their full training offering for expert witnesses.

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Is contributory negligence really low hanging fruit? Why blaming patients is easy—and often lazy

by Professor Piers Page, trauma & orthopaedic surgeon at Swansea Bay University Health Board.

Introduction

It is now more than 80 years since the Law Reform (Contributory Negligence) Act 1945 began to adjust the balance in favour of the less-than-perfect claimant, permitting apportionment of damages where previously any contribution whatsoever had nullified the possibility of an award. Enacted to redress the "unholy triad" that had weighed so heavily against the workers of the 19th century, it was seen at the time as an enlightenment in the law.

There is a risk now, though, that it is serving the opposite purpose. I am commonly instructed in cases where there is a clear strategy of contributory negligence in the defence, but where little or no attention is paid to what has been done by the defendants to mitigate the risk factors on which they rely.

Expert witnesses, solicitors, barristers and, indeed, many patients are aware of the impact of smoking, alcohol use and dietary habits on healing, especially of fractures. These factors often, therefore, feature in a rebuttal – this patient smokes, so it follows they were not going to heal. One of the wonderful things about working in limb reconstruction, though, is the sheer ability of the human body to overcome so much disadvantage and nonetheless heal, allowing our patients to regain function and happiness. This means that a risk factor isn't an incontrovertible determinant of outcome to the patient and a bulletproof, all-encompassing protection for the defendant, but rather something that needs to have been weighed and addressed throughout the patient's journey.

This article argues for a stricter clinical standard: if a risk factor was important, what did you do to minimise its impact?

What adjustments were made?

It is easy to discern in clinical notes when a potentially contributory factor has been contemporaneously addressed. In smoking, for example, a clear offer of smoking cessation advice and support, and documentation of the risks of failure to stop should be evident.

The approach cannot stop there, though. It is well-known just how hard it is to stop smoking and, if we believe it will contribute to adverse healing, we need to control the things in our surgical gift. Longer follow-up, more radiographic surveillance or frequent wound checks are all examples of surgical proactivity in response to identification of a risk factor.

The same principles can be applied to many other frequently-cited factors, but with the same scrutiny due. Was the fixation strategy suitable for the "morbidly obese" patient? Had ankle-brachial pressure indices been calculated for the "known vasculopath"? Who was checking in on the unhoused patient with "known compliance issues"? Documenting these issues without doing something to help can easily appear to be either a moral judgement or getting the excuses in early.

When contributory negligence is legitimate

There are cases where contributory negligence is pertinent: immediate return to sport against advice, removal of immobilisation against guidance or repeated non-attendance for follow-up are all examples of situations that can contribute to poorer outcome. Even then, though, any defence needs to clearly demonstrate the appropriate information was given, steps were taken to respond to early non-compliance and that duty was otherwise wholly fulfilled.

The natural history of the injury and its recovery should be clearly elucidated in any reports, and clear comparison drawn with the evidence on the relevant contributory factors.

The "consolation" prize defence

Too often, contributory negligence appears to be a consolation prize when breach is difficult to deny and causation is strong. It reduces quantum without confronting the clinical record's weaknesses: thin documentation, vague safety netting, slow escalation, or one size fits all pathways for high risk injuries. That move may be tactically attractive but it does not prove good medicine, and it is rarely persuasive when the expert analysis is rigorous.

A composite anonymised example

A 61-year-old man falls from a ladder at work and sustains a hip fracture. Surgery is undertaken, and it is noted during the procedure that there is significant comminution. What is not noticed is that the fixation construct is suboptimal, meaning that the chosen implant is at higher risk of failure. The patient is discharged with no further follow-up and re-presents the following year with agonising thigh pain and minimal ability to bear weight.

An X-ray showed that the fracture hadn't united, the bone density of the proximal femur had plummeted and that the fixation had failed. The patient went on to need complex total hip replacement, from which they had an uneventful recovery that nevertheless precluded a return to work, occasioned 2 years of gratuitous care and left them needing mobility aids at all times outdoors.

A letter of rebuttal to the breach and causation report noted the bone resorption and asserted that it demonstrated the Claimant's smoking "rendered union impossible." On this basis, it was argued that the choice of implant and the standard of surgery were irrelevant.

The Claimant's expert was able to demonstrate clearly from the literature that the contribution of poor fixation with the wrong implant, and failure to provide enhanced follow-up to a high-risk patient was an order of magnitude more contributory than C's smoking.

A practical checklist for experts and solicitors

When contributory negligence is asserted, test it against the record:

1. Specificity: Is the behaviour precisely described, dated, and evidenced?
2. Communication: Were risks and red flags explained in plain language and documented?
3. Accessibility: Was the route back to care realistic (timely, reachable, affordable)?
4. Adjustment: What changed in the plan because of the risk factor? (follow up, thresholds, strategy)
5. Predictability: Was the behaviour predictable given pain, context, and human factors?
6. Materiality: What is the plausible proportion of outcome attributable to the behaviour?
7. Alternatives: Would the same outcome likely have occurred anyway given injury severity and care decisions?

If these answers are weak, contributory negligence is likely a shortcut rather than a sound conclusion.

Conclusion: raise the standard

My view is simple - risk factors impose a duty to adapt care. They do not grant permission to downgrade it, nor do they provide a ready made defence when complications arise. Patient behaviour matters, but so do decision-making, quality of intervention, pathway design, communication, follow up plans, and clinical judgment under pressure.

Contributory negligence is not "low hanging fruit". It is a narrow, evidence based conclusion reached after we have asked the harder questions about standards, systems, and decisions.

Professor Piers Page is a consultant orthopaedic trauma and limb reconstruction surgeon at Swansea Bay University Health Board, National Clinical Lead for Trauma in the Wales Orthopaedic Network and Specialty Lead for Musculoskeletal Disorders, Health and Care Research Wales. He holds the Diploma in Legal Medicine, with Distinction, and LLM Healthcare law and medical ethics.

His caseload is managed by Emily Fallick at TLA Medicolegal (emilyf@tla-medicolegal.com).

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Shaheen & Anor v Daish [2025] EWHC 3056 (KB) – silence in medical records

by Emma Woods at Gatehouse Chambers

Background

The claim was brought by the wife and son of Mr Ajaz Ahmed, the Deceased, against Mr Ahmed's GP. Mr Ahmed sadly died of lung cancer on 23 February 2023 at the age of 49.

The Claimants alleged that an opportunity to intervene and treat Mr Ahmed's cancer was missed as a result of the negligence of his GP, Dr Daish, who saw the Claimant once at an appointment on 11 February 2019.

At the appointment, Dr Daish requested a chest x-ray using the Integrated Clinical Environment ('ICE') system. A request for an x-ray made via the ICE system was not acted on, until the patient attended a walk-in radiology department. There was no follow-up for the doctor or the patient.

The main factual dispute was whether Dr Daish had told Mr Ahmed that she had made the request and what he needed to do.

The record for the appointment confirmed that a chest x-ray was requested by Dr Daish, but did not contain an account of any exchange between Mr Ahmed and Dr Daish about that.

Unsurprisingly, Dr Daish had no recollection of the appointment and she relied upon her usual practice, which was that she orders an x-ray for a patient, she informs them that that is what she has done and the process they need to follow.

The chest x-ray request was in a separate document and completed 14 minutes after the appointment started. It appeared in the record of the consultation, because it is populated to the record automatically on completion of the request, rather than because Dr Daish typed it there.

The records showed that Mr Ahmed had already left the surgery to book a follow-up appointment by the time the x-ray request and supplementary prescription were finalised.

Mr Ahmed did not attend for the x-ray ordered by Dr Daish. His cancer was diagnosed following a chest x-ray in January 2020.

The parties agreed that, if an x-ray had been done, it would have shown an abnormality, a CT would have been recommended and this would have led to treatment for cancer. The parties disagreed on whether the treatment would have been successful and altered the progress of the cancer.

The issues

There were three preliminary issues before Christopher Kennedy KC sitting in the High Court:

- Did the Defendant fail to tell/inform the Deceased that a chest x-ray was required and/or that the Deceased needed to attend the local walk-in radiology department in order for the chest x-ray to be carried out;
- If the court finds that the Deceased was not told and/or informed about the chest x-ray and/or that the Deceased needed to attend the local walk-in radiology department in order for the chest x-ray to be carried out, whether the Deceased would have attended for a chest x-ray had he been so informed;
- Contributory negligence

Was Mr Ahmed told about the chest x-ray and the need to attend radiology?

The Judge found that Mr Ahmed was not told for the following reasons.

In respect of Mr Ahmed, the Judge held that he had been worried about his health in late 2018 and early

2019 and it was more likely that if a recommendation had been made for further investigation, he would have followed it up. Also, Mr Ahmed was familiar with a process whereby a request was made, and it was for the patient to take it further – he had gone through this process with his blood tests. There was no evidence in the records that Mr Ahmed had had an x-ray of any sort before, this was a new form of investigation, which made it less likely that if told about it, he would have dismissed it.

Furthermore, Dr Daish accepted it is likely that she would have told Mr Ahmed that the reason for the x-ray was to rule out more serious pathology, in particular cancer. The Judge noted this is an investigation that most people, not simply those worried about their health, would take forward.

The Judge also scrutinised the medical records and noted:

- There was no record in the appointment note of any discussion about the chest x-ray or in the Dr Daish's plan. This was a contrast to the records of other doctors, who recorded their further investigations in their notes. The Judge held it likely that if Dr Daish had been dealing with the chest x-ray in Mr Ahmed's presence, she would have made reference to it in the record of the discussion or her plan.
- Whilst Dr Daish's evidence was that part of the reason she allowed 2 weeks before the review appointment to permit the x-ray to be obtained and reviewed, this was not included in her note.
- This was not a normal consultation where all matters were dealt with in the presence of Mr Ahmed. Dr Daish had further thoughts after Mr Ahmed had gone and prescribed prednisolone – that made it more likely the x-ray was also an afterthought.

Would Mr Ahmed have attended for a chest x-ray if he had been informed

The Judge had no difficulty in finding Mr Ahmed would have attended for a chest x-ray if he had been requested.

Contributory negligence

The Judge noted the observations of Yip J in Dalton v Southend University Hospital NHS Foundation Trust [2019] EWHC 832 at [33] that contributory negligence in clinical negligence cases is rare.

The Judge distinguished the cases of Pigeon v Doncaster Royal Infirmary and Montagu Hospital NHS Trust [2002] Lloyd's Rep Med 130 and Sims v MacLennan [2015] EWHC 2739 (QB). Pigeon concerned a Claimant who accepted that she understood the risk she was taking in not having smear tests. Sims concerned a Claimant who failed to follow advice to have his blood pressure checked. Both those cases had evidence that the Claimants understood the significance to follow the advice of GP.

The Judge held that the Defendant could not show that Mr Ahmed understood the significance of his failure to attend, and without that understanding, it would not be unreasonable for a person in Mr Ahmed's position not to attend the relevant appointments.

Comment

This case is a useful reminder of how a Court will consider and evaluate medical records, and how silence on an issue can be a critical factor in a case, especially when considering evidence about usual practice.

This case also shows again how difficult it is to establish contributory negligence in clinical negligence claims.

Mr Konstantinos Papagiannopoulos
Cardiothoracic Surgeon - MBChB, MMEd(Thorax), MD(CTh)

Mr Papagiannopoulos undertakes medico-legal work. He has attended lectures and received the Cardiff University Bond Solon expert witness certificate.

His areas of interest are:

- Minimally invasive treatment of lung cancer including chest wall (rib case).
- Management of airway disease benign and malignant (wind pipe) with local resection, PDT and stents.
- Treatment of emphysema; surgical and endoscopic using special valves.
- Treatment of chest wall deformities; pectus repairs without the use of metal bars both minimally invasive and open (Nuss or Ravitch).
- VATS (key hole) surgery for malignant and benign diseases of chest with an established program in Leeds since 2005.
- Complex operations for lung cancer involving spine offering team approach with a senior Neurosurgeon.
- Minimally invasive treatment for Thoracic Outlet syndrome (key hole surgery).
- Minimally invasive treatment (key hole) of atrial fibrillation.
- Management of mesothelioma.
- Offers second opinion for complex and failed procedures with National and International referrals

Details of expert witness practice:

- Claimant to defendant to joint expert ratio: 75/20/5
- Medical negligence cases
- Does not undertake medico-legal work under the age of 18
- Workload: approximately 120-150 cases per annum
- Experience in Coroner's/Crown Court

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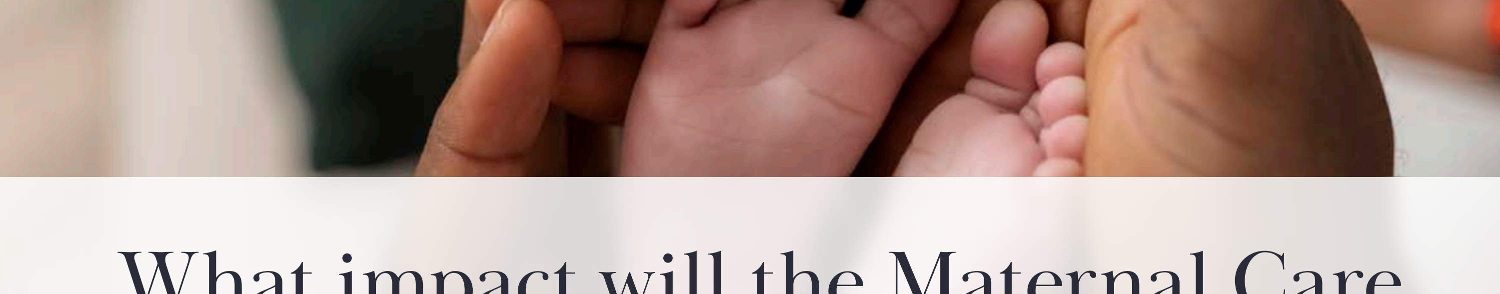

What impact will the Maternal Care Bundle have on future claims?

by Barbara Richardson, Senior Associate at Clyde & Co.

In response to a sharp increase in maternal deaths, NHS England has published the Maternal Care Bundle (MCB). The MCB identifies 5 areas of maternal care where the risk of maternal mortality is increased – what impact will it have in assessing future clinical negligence claims?

The MCB aims to reduce maternal mortality. It responds to MBRRACE UK data which shows a 21% rise in maternal deaths since 2009–11, and that 45% of maternal deaths had potentially preventable elements

The MCB sets national minimum standards across five high risk clinical areas of maternal health: - venous thromboembolism (VTE), pre hospital and acute care, epilepsy in pregnancy, maternal mental health, and obstetric haemorrhage. The minimum standards must be implemented by NHS Trusts and ICBs by March 2027

1. VTE

- Early pregnancy VTE risk assessment will be offered at the first NHS contact, not at booking.
- Rapid access to LMWH within 72 hours is to be provided for high risk women.
- Standardised dosing of LMWH will be introduced.

2. Pre-hospital and acute care

- There will be a mandatory implementation of MEWS across all settings for women who are, or have been, pregnant in the past 4-weeks.
- Standardised pre alert systems between the ambulance and labour ward will be introduced, alongside clear labour ward signage.
- Clear referral pathways for acutely unwell women from local services to maternal medicine centres will be implemented.

3. Epilepsy in pregnancy

- There will be guaranteed access to a local epilepsy in pregnancy team (consisting of an obstetrician, obstetric physician and epilepsy nurse specialist or neurologist), who will lead care plans.
- Women requiring more complex care must be referred to a maternal medicine network MDT to oversee the provision of care.

4. Maternal mental health

- There will be routine wellbeing screening throughout pregnancy and women should be invited to self-administer the Whooley questions.
- Where there are concerns, the patient will be invited to complete the EPDS.
- Where women score 13 or above in total, or 2 or above on self-harm, there will be a conversation to discuss care options, agree next steps and arrange referrals.

5. Obstetric Haemorrhage

- There will be mandatory cumulative measured blood loss for all births
- Standardised escalation steps at 500 mL, 1,000 mL, and 1,500 mL are to be introduced, with consultant involvement for ongoing bleeding.
- MDT case review will be required for all women who suffer >2 L blood loss or use fibrinogen/cryoprecipitate within a month.

The MCB establishes baseline standards in maternal care, albeit only in the above areas of concern.

In respect of future claims, we can expect that the MCB will be used by solicitors to evidence breach of duty. Because the standards are specific, time-limited and standardised, they are likely to be treated by the

courts as evidence of what the standard of reasonable care is in the above scenarios. Any deviation from the MCB standards will likely constitute a breach of duty and reliance on expert evidence will be reduced in these areas.

There will also be a wider impact on consent allegations as the MCB references McCulloch and directs that women should be supported by clinicians to understand their options and the potential benefits, harms and consequences of each. This, in a small way, formalises the Supreme Court's decision in McCulloch, and creates a guidelines for solicitors to refer to in respect of consent allegations.

While to a lesser extent, the MCB could also be used in causation arguments, as it was produced to lessen the risk of maternal death. In the future, the argument could therefore be made that "but for" the failure to implement the standards, the outcome would have been different.

From a defendant perspective, where the standards are fully implemented by NHS Trusts and ICBs, there could be a fall in claims relating to the above high-risk areas. There is also the hope that the MCB will have its intended effect, and that earlier detection and management of risk will prevent patients suffering avoidable injury and death.

Clyde & Co's healthcare group is recognised for its extensive industry knowledge, offering a range of legal services covering public and private sectors as well as inquests, advocacy, professional regulation, product liability and pharmaceuticals/life sciences. Should we be able to assist you, please do contact one of our experts.

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Mrs Nadia Soliman

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I have been a consultant obstetrician and gynaecologist for over 20 years with a broad NHS and general private practice. I have run busy inpatient/outpatient services and managed complex cases in adherence to clinical evidence and guidelines. I have extensive experience in gynaecological surgery with particular skills relating to surgical techniques and perioperative management. I have been the recipient of four Clinical Excellence Awards in the NHS in recognition for service development and excellent patient care. At present I provide service in private sector both in clinical and medicolegal capacities. I see clients for medicolegal consultations in Dorchester.

I have been a medicolegal expert since 2019. I am trained in report writing and giving evidence in court. I prepare medicolegal reports for personal Injury, clinical negligence and causation. I am able to prepare and submit reports within eight weeks of receiving complete instructions and the complete set of records. I am aware of the Jackson Reforms and hence the need to control costs and adhere to court timetables.

I am frequently instructed on cases to deal with RTA in pregnancy, early pregnancy complications (including miscarriage and ectopic pregnancies). My other areas of interest are complications of pregnancy and childbirth, gynaecological emergencies and gynaecological surgery and management of infertility.

Having personally dealt with very challenging obstetric cases, complex early pregnancy complications and performed thousands of surgical procedures, I have developed a wealth of experience that I believe has grounded me with a balanced sense of fair judgement and clinical acumen. My responsibilities as Head of Department have provided robust experience in adjudication of disputes, medical errors and patient complaints. I have had to conduct detailed investigations and root cause analyses of medical cases performed by my colleagues. These have developed my skills in reading and critically appraising big volumes of medical records in addition to honing my skills of mediation, arbitration and communication.

In April 2020 I successfully completed the recognised training and assessment and have been awarded Cardiff University Law School Bond Solon Expert Witness Certificate. I have joined the National Register of University Certified Expert Witnesses.

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Rahila Khan joined Pyper Medical Services in 2021, she has completed 110 expert reports. Currently, she is preparing 3 reports per month on clinical negligence in Obstetrics for both claimants and defendants.

- Consultant Obstetrician and Gynaecologist at University Hospitals Sussex since 2010.
- Lead in Maternal Medicine and Diabetic pregnancy
- Broad experience in all aspects of Obstetrics, including high-risk pregnancies and intrapartum management.
- Extensive experience of O&G in 3 continents and different perspectives on treatment.
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I undertake 100 cases annually, 10% Single Joint Expert, 70% Claimant, 20% Defendant. I am an AVMA and MPS Panellist.

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Testing the Evidence, Not the Expert: What De Francisci v Hampshire Hospitals NHS Foundation Trust Teaches About Causation

by Dr. Carolina Stamboulid, PhD.; Founder and Scientific Evidence Analyst, at Epistēmē Scientific Consulting

De Francisci v Hampshire Hospitals NHS Foundation Trust is a clinical negligence case that warrants close attention from expert witnesses and those who instruct them. Breach of duty was admitted, the relevant clinical guidance was accepted, and the underlying biological mechanism was not in dispute. Yet causation failed.

What makes this judgment particularly instructive is not its outcome, but the court's reasoning. The case did not turn on a preference for one expert over another. Instead, the court examined the type, quality, and methodological robustness of the scientific literature relied upon by each expert and determined which body of evidence was capable of answering the causation question on the balance of probabilities.

For expert witnesses, the judgment shows a clear judicial willingness to look beyond headline conclusions and interrogate study design, statistical robustness, and applicability to the individual claimant. For solicitors, it highlights the value of testing the evidential foundations of a case at an early stage, before significant costs and positions harden.

The Case in Brief

The claimant, a woman with polycystic kidney disease, developed HELLP syndrome during pregnancy. The Trust accepted that aspirin should have been advised at 12 weeks in accordance with guidance from the National Institute for Health and Care Excellence for women at higher risk of pre-eclampsia. Instead, aspirin was commenced at 23 weeks.

The central question for the court was therefore narrow but demanding: if aspirin had been started at the correct time, would this claimant, on the balance of probabilities, have avoided HELLP syndrome? Answering that question required the court to examine what the medical literature could legitimately demonstrate, rather than what might appear biologically plausible or intuitively persuasive.

Two Experts, Two Evidence Bases

Both experts were experienced obstetricians drawing on reputable research. Although they reached different clinical conclusions, the divergence in opinion reflected the different bodies and types of scientific evidence upon which those conclusions were based.

The claimant's expert placed primary reliance on the meta-analysis by Roberge *et al.* (2017), supported by a small randomised trial by Ebrashy *et al.* (2005). This evidence base relied predominantly on aggregate data (AD), with conclusions drawn from study-level summaries and subgroup analyses. It emphasised large protective effects of early aspirin, with severe pre-eclampsia outcomes used as a proxy for HELLP syndrome.

The defendant's expert relied instead on the Cochrane review by Duley *et al.*(2019), together with the individual participant data (IPD) meta-analysis by Meher *et al.* (2019), which pooled raw patient-level data across trials involving approximately 40,000 women. This evidence base provided the most robust assessment of overall effect size and timing, while the Cochrane review examined HELLP outcomes directly.

The court's task was not to decide which expert was more persuasive. It was to determine which body of literature was methodologically capable of supporting a conclusion on causation on the balance of probabilities.

Aggregate Data vs. Individual Participant Data

A key distinction recognised by the court was between AD and IPD meta-analyses. Although both are often labelled simply as “meta-analyses”, they differ substantially in methodological strength.

AD meta-analyses combine published summary statistics from individual trials. While well established, they are limited in their ability to analyse subgroups reliably and are more vulnerable to ecological bias, publication bias, and the amplification of effects in small subgroups.

IPD meta-analyses re-analyse raw patient-level data across trials. This allows proper subgroup interrogation, adjustment for confounders, and more stable effect estimation. Within the hierarchy of evidence synthesis, IPD meta-analyses are generally regarded as providing the least biased estimates available.

The court accepted that, in this context, the IPD evidence provided a more robust and less bias-prone basis for assessing causation, particularly where the claimant’s case depended on timing and subgroup effects.

Subgroup Fragility and Population Mismatch

The claimant’s case depended heavily on subgroup findings relating to aspirin initiated at or before 16 weeks, and on extrapolation from severe pre-eclampsia outcomes to HELLP syndrome specifically. These findings arose from small subgroups within trials that were not designed to answer those questions.

Small subgroups can produce large relative risk reductions that appear persuasive but are statistically unstable. A small number of outcome events can materially shift the point estimate, giving an impression of certainty that is not supported by the underlying data. The court demonstrated clear awareness of this fragility.

The judgment also identified a significant population mismatch. One of the key trials underpinning the claimant’s analysis excluded women with renal disease, yet the claimant had polycystic kidney disease. This was not treated as a peripheral technicality, but as a material limitation on the applicability of the evidence to the individual claimant.

For expert witnesses, this is a critical reminder that population similarity is central to causation analysis, even where breach is conceded.

Evidential Limits: Probability, Plausibility, and Causation

HELLP syndrome is rare, and no randomised trials have been designed specifically to study its prevention. When HELLP outcomes were examined directly in the Cochrane review, the estimated relative risk suggested a possible reduction, but the confidence interval crossed unity, rendering the analysis underpowered. In statistical terms, the available evidence could not demonstrate that aspirin clearly prevents HELLP.

The individual participant data meta-analysis, while methodologically more robust, did not identify a larger effect or a timing-dependent benefit capable of establishing that aspirin would probably have prevented HELLP in this claimant. Taken together, the highest-quality evidence suggested a possible reduction in risk, but not one sufficient to satisfy the legal test for causation.

The court drew a clear distinction between evidence that indicates a trend and evidence capable of supporting a conclusion on the balance of probabilities. It declined to bridge that gap, notwithstanding the intuitive appeal of the claimant’s argument.

Both experts agreed that early aspirin is biologically plausible. However, the court did not permit biological plausibility to substitute for statistical certainty. Plausibility explains why an intervention might work; it does not establish that it did work, or that it would probably have done so in this case. This distinction is particularly important for expert witnesses: a relative risk below 1.0, without more, does not establish causation in an individual case, and plausibility cannot be used to compensate for evidential limitations. Expert witnesses should therefore take care to separate biological rationale from probabilistic proof, and to articulate clearly where the evidential support for causation legitimately stops.

Practical Lessons for Experts and Solicitors

What is particularly notable in the De Francisci judgement, is how the court approached expert reasoning itself. The judge examined whether the experts’ conclusions were logically supported by the literature they relied upon. He tested whether assumptions were justified, whether extrapolations were defensible, and whether limitations were properly acknowledged. Cherry-picking, over-reliance on fragile subgroups, and substitution of plausibility for probability were all exposed under scrutiny. This reflects a broader trend. Courts are increasingly comfortable engaging with methodological quality where causation depends on scientific inference.

For expert witnesses, the judgment underscores the importance of precision. When citing meta-analyses, it is essential to be clear whether the evidence is aggregate or individual participant data, and to explain why that distinction matters. Experts should identify the specific subgroups their conclusions depend upon, including their size and statistical stability, and ensure that study populations resemble the claimant's clinical profile. Do not rely on biological plausibility to bridge gaps in the quantitative evidence. Where the data show a trend but the confidence interval crosses unity, say so plainly.

For solicitors, the case highlights the value of early methodological scrutiny of the evidence base. Where causation depends on subgroup analyses, rare outcomes, or extrapolation between related conditions, careful examination of the underlying scientific assumptions at an early stage can prevent unrealistic case valuation and late-stage evidential collapse. The evidential weaknesses that determined the outcome in De Francisci were present in the literature from the outset. Identifying them before substantial costs have been committed allows for more realistic case evaluation and, where appropriate, earlier resolution.

Taken together, the judgment reinforces a central lesson for experts and instructing solicitors alike: the strength of an expert opinion lies not in its confidence, but in whether the evidence relied upon is methodologically capable of supporting it. As courts become more sophisticated in their engagement with medical evidence, those who understand these distinctions will be better placed to build cases that withstand scrutiny - and to identify, early on, those that may not.

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Consultant Urologist

Mr Dawson is a Consultant Urologist with over 29 years' experience. He has formal training in personal injury and medical negligence reporting and completed the Bond Solon Expert Witness Course in 2006. In 2008 he completed a Diploma in Law at the College of Law in Birmingham.

Mr Dawson has over 22 years of medico legal report writing and expert witness work and has completed over 2000 reports, He has completed numerous Fitness to Practise reports for the General Medical Council.

He is the author of the ABC of Urology, now in its 3rd edition, and also co-edited the Evidence for Urology which won first prize in the urology section of the BMA Medical Book Competition in 2005.

Mr Dawson is happy to accept instructions for personal injury, clinical negligence and condition and prognosis reports.

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I am a Consultant Urological Surgeon (and Honorary Senior Lecturer) practising in Oxford. I have an active clinical practice (NHS & private) and I am involved on a national level in Urological and cancer management. My research interest is urological oncology and haematuria.

I provide a general urological practice with specialist interest in benign prostatic hyperplasia (BPH), uro-oncology, bladder cancer, prostate cancer and the management of haematuria. I have been offering a Medicolegal service for 20 years providing expert medical opinion in medicolegal reports and in court.

I am happy to offer a medicolegal opinion on any aspect of urology with specific focus on urological oncology.

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Mr Wale Olarinde has been in active clinical practice in otolaryngology (ear, nose & throat) practice since 1996. His practice is a general otolaryngology practice with a special interest in head and neck surgical conditions. He is a core member of the North Trent Head and Neck Cancer Multidisciplinary Team that discusses the management of over 350 new cases of head and neck cancers a year. He is also a core member of the North Trent Thyroid Multidisciplinary Team. He regularly sees patients in a dedicated weekly neck lump clinic, two-week wait cancer clinic and a multidisciplinary head and neck cancer clinic. He performs surgery for head and neck cancer patients at Chesterfield Royal Hospital and the Royal Hallamshire Hospital, Sheffield. He also carries out surgery for a wide range of benign head and neck conditions including thyroid and parathyroid surgery.

His general otolaryngology practice includes providing a specialist service for patients with all forms of hearing loss, tinnitus, vertigo, throat, swallowing, sinus and nasal complaints. He carries out a wide range of surgical procedures for these general ear nose and throat conditions. He provides specialist care for patients with injuries to the head, neck and facial regions.

He is a regular lecturer on the national ENT Masterclass courses lecturing in the United Kingdom and internationally. He is an examiner to the Royal College of Surgeons of England

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Mr Olarinde has given oral evidence at the King's Bench Division of the High Court and at Crown Courts.

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Dr Wael Agur is a Consultant and Lead Urogynaecologist at NHS Ayrshire & Arran, West of Scotland. He is doubly qualified from the Royal College of Obstetricians & Gynaecologists (RCOG) as an Obstetrician & Gynaecologist and a Subspecialty-Accredited Uro-gynaecologist. Dr Agur is also an Honorary Professor at University of Glasgow.

He has practiced Obstetrics & Gynaecology, and principally Urogynaecology, as a consultant since 2009. He is currently Consultant Gynaecologist and Subspecialist and Clinical Lead in Urogynaecology. His area of interest is Urogynaecology which also includes maternal childbirth injuries.

Dr Agur has served on several Government Groups addressing the transvaginal mesh matter in Scotland and England and has provided written and oral evidence to the UK Independent Medicines and Medical Devices Safety Review, The Cumberlege Review.

He has been undertaking medico-legal work since 2010 and has undertaken full training with Bond Solon courses on basic and advanced report writing. Medico-legal work has involved reports on Liability and Causation, Condition & Prognosis and Product Liability. He has also provided medico-legal advice to NHS Scotland Central Legal Office and continues to provide Consultancy and Expert Reports to several law firms in the UK, Republic of Ireland and Australia.

Instructions undertaken from solicitors representing claimants, defendants, and joint instruction in relation to Clinical Negligence matters in the areas of Urogynaecology (including pelvic mesh procedures), General Gynaecology and Maternal Childbirth Injuries. Dr Agur also considers instructions in relation to Pelvic Mesh Product Liability.

Dr Agur has given evidence in The Federal Court of Australia in July 2017, following instructions from the law firm acting on behalf of over a thousand women in a Product Liability Class Action against a pelvic mesh manufacturer.

He currently accepts around 30-40 instructions per year. Dr Agur participates in annual appraisal and appropriate Continued Professional Development in compliance with the RCOG Portfolio; and remains up to date in his expertise in his area of practice.

Dr Agur has authored and co-authored several key peer-reviewed publications.
He runs an active research programme in the surgical and non-surgical treatment of pelvic floor dysfunction and continues to hold a Research Fellowship from NHS Research Scotland.

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Judgement, Evidence and Hindsight: An expert's approach to assessing auditor negligence

by Divya Devadoss, Associate Director, Forensic Services at Crowe.

The new battleground in auditor negligence

Expert evidence in auditor negligence matters can be invaluable. This is particularly the case as the world of financial reporting becomes increasingly thorny, involving complex estimates, subjective assumptions and forward-looking judgements. All of this contributes to the line between a defensible professional decision, and auditor negligence in failing to identify an issue, becoming increasingly blurry. Expert opinion to distinguish between the two, and determine whether a judgement was 'reasonable', can therefore be crucial, but complicated.

Auditors are no longer just tasked with mechanical compliance and box-ticking but now face scrutiny over the quality of their professional judgment in evaluating management decisions. When allegations of negligence arise, audit and forensic experts are required to strip away the distortions of hindsight and step into the shoes of the auditor at that time, reconstructing the circumstantial environment in which their conclusions were formed.

A forensic lens reveals the rigour of the auditor's challenge via an assessment of the contemporaneous evidence.

Case Study: Administrators claim against the auditors of a major listed healthcare company after off-balance sheet caused a corporate collapse

This recent high-profile £2 billion High Court claim highlighted that significant inconsistencies in the companies' debt position was already available to the audit team yet no meaningful follow-up was undertaken. When challenged, the auditors maintained that they were unaware of the issues but contemporaneous evidence showed that relevant information had been received by the auditors and simply not pursued.

In addition to the confidentially settled claim, the auditors are also subject to regulatory investigation by The Financial Reporting Council (FRC) whose provisional report into the matter noted "extremely serious" failings.

This is the basis of the determination as to whether their decision making was reasonable based on what they knew – or should have known – at the time.

When good judgement goes bad

There are several 'grey areas' in accounting where two professionals could reasonably reach opposing conclusions. Such judgements often involve imperfect information and competing indicators, with auditors being required to weigh up often contradictory information.

In these cases, the issue is often less about whether the expert agrees with the judgment reached, but rather more about whether the auditor's process for arriving at their judgement was sufficiently robust, coherent and evidence driven.

A judgement may look reasonable when viewed in isolation, but forensic review of the steps taken to reach that outcome can often reveal omissions or weaknesses. As well as ensuring that auditors have addressed all the information in front of them appropriately, forensic experts will also look to ensure that auditors asked the right questions to establish the full facts of the matter. It is not enough for an auditor to simply say they weren't aware of a key issue if it can be established through evidence that they should have been.

Case study: Regulatory findings regarding the audit of long-term construction contracts

The FRC sanctioned the auditor of a major listed construction company for failure to properly assess and challenge management's inclusion of overestimated settlement amounts relating to

ongoing litigation as revenue. The auditor accepted management's view that a higher settlement figure would be achieved.

Although this was a judgmental issue involving significant uncertainty, the regulator concluded that the auditors accepted management's overly optimistic view with insufficient scepticism or corroboration after a forensic review of the audit files and contemporaneous evidence.

Recreating the audit room: evaluating an auditor's response to fraud risk

A forensic review reconstructs what information was truly available. This matters because auditors often face concealment strategies, delayed information, or seemingly plausible explanations.

Such a reconstruction helps identify whether red flags were:

- detectable with reasonable effort
- masked by management
- unconnected to audit scope
- not logically linked to the auditor's assigned purpose.

This helps the Courts understand that even severe failures in an organisation do not automatically equate to negligent audit decision making.

Experts need to be mindful of avoiding hindsight in audit negligence cases. After failure or fraud is uncovered, linkages seem obvious and missing procedures seem decisive. Forensic reconstruction provides an anchor against which the information that was truly within the auditor's potential grasp, at the time, can be properly considered.

Case study: client concealment contributed to an auditor's successful defence

The High Court dismissed a negligence claim brought against an auditor despite findings that aspects of the audit work were "seriously deficient." The company had suffered a £4.5 million accounting understatement caused by "serious irregularities" in its internal accounting systems, which were only discovered years later.

However, the judge ruled that although the audit work fell below the required standard in places, it could not be established that a reasonably competent auditor would have identified the issues due to management's behaviour and concealment of the issues.

Concluding thoughts

Assessing auditor negligence is a balance between technical rigour, investigative discipline, and resistance to hindsight bias. An expert's responsibility is not to convict or defend auditors, nor to opine on the judgement they personally would have reached, but to illuminate:

- what the auditor reasonably should have done
- what information was realistically available
- whether deviations from standards occurred
- whether those deviations actually caused the claimed losses.

In an era of increasing regulatory scrutiny and high profile litigation, objective expert collaboration remains essential. Combining forensic reconstruction with audit technical provides clarity, context, and impartial judgement that can be crucial to reaching the right outcome.

If you're facing an auditor negligence dispute or need expert support in evaluating judgement, evidence or process, our specialists can help. Get in touch to discuss how forensic reconstruction and audit expertise can bring clarity to your case.

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- Return to work programmes, including stress and depression
- Post-concussion clinics and mild traumatic brain injury clinics
- PTSD
- Stroke

We are instructed by claimant and defendant solicitors, as well as directly by various insurers and reinsurers seeking to mitigate long term, high value, neurological related claims.

Negligence by Omission: The Role of Professional Curiosity in Mental Health Care

by Alexandra Penfold, Registered Mental Health Nurse and Expert Witness (Somek & Associates)

Trigger warning: This article makes reference to self-harm and suicide

Introduction

In negligence claims relating to mental health care, allegations often arise not from what was done but from what was not done, including questions that were not asked and risks that were not explored. Professional curiosity is central to this, as it involves probing beyond the surface, examining uncertainty, and drawing together different sources of information to ensure risk is assessed meaningfully. This article considers how the presence or absence of professional curiosity becomes a key factor in determining whether the standard of care was met.

What is Professional Curiosity?

Professional curiosity refers to the active process of testing, probing, clarifying and triangulating information when a patient's account is incomplete, contradictory or uncertain (Thackner et al, 2020). In the context of assessing an individual's risk of harm in a mental health setting, such as risk of suicide, it involves recognising ambiguity in risk assessment and exploring it rather than accepting surface-level explanations.

In practice, this includes:

- Using open-ended questions to explore a patient's thoughts of self-harm or suicide.
- Exploring ambivalence, instead of relying on simple denial of any such thoughts.
- Reconciling inconsistencies between the patient's report and collateral information from family, carers or other professionals.
- Updating a patient's risk formulation when there is a change in presentation, such as a deterioration in mental state or an increase in risk factors.

Undertaking risk assessments as a mental health professional inherently involves a degree of uncertainty and ambiguity. Patients may minimise intent, present with a fluctuation in mood, or provide accounts that do not align with observed behaviour or collateral information from families or carers. Although the risk of harm cannot be reliably predicted, this does not diminish the need for professional curiosity and attentiveness; rather, it reinforces the importance of actively exploring uncertainty to ensure risk is assessed as fully and accurately as possible.

In essence, professional curiosity ensures that mental health risk assessments are grounded in active enquiry rather than assumption, leading to a more complete understanding of the patient's risk profile. There are also therapeutic benefits to this approach, as research shows that greater emotional engagement through open-ended questioning and a genuine interest in the patient's concerns can enhance clinical efficacy and contribute to improved quality of life (Mangena and Chabeli, 2005).

Why This Matters for Solicitors

Solicitors need to understand professional curiosity because it often lies at the heart of omission-based negligence claims. It is, however, an inherently nuanced and context-dependent concept within mental health services. Although frequently referenced in safeguarding and social care, its application to mental health risk assessment remains ambiguous and complex (Taheri and Naseri, 2024). Consequently, determining whether a lack of enquiry fell below the standard of care requires careful consideration of the Bolam principle (Bolam v Friern Hospital Management Committee [1957]

1 WLR 582) and its refinement in Bolitho v City and Hackney Health Authority [1998] AC 232. It is also increasingly cited in legal discourse, including Coroner Inquests and Prevention of Future Death reports (Courts and Tribunals Judiciary, 2025; Courts and Tribunals Judiciary, 2025). This growing prominence further highlights the need for solicitors to understand its implications, despite the fact that professional curiosity still lacks a rigid definition or universally accepted standard.

Professional and Operational Landscape

The professional and operational landscape regarding professional curiosity is key to understanding how omissions may become significant in clinical negligence claims related to mental health practice. In this context it's essential to recognise the professional framework that mental health professionals, such as registered mental health nurses, follow.

1. The Nursing and Midwifery Council Code

Mental health nurses are regulated by the Nursing and Midwifery Council (NMC) and are required to practise in line with The Code: Professional Standards of Practice and Behaviour for Nurses, Midwives and Nursing Associates (Nursing and Midwifery Council, 2018). Although the Code does not explicitly refer to "professional curiosity", its core standards reflect the principles underpinning it. These include responsibilities to:

- Assess needs and provide evidence-based care.
- Recognise and respond to deterioration in physical or mental health.
- Communicate clearly and share information appropriately.
- Maintain safety and escalate concerns promptly.

While the Code does not prescribe specific steps, it mandates that nurses exercise sound clinical judgement, actively assess risk, and escalate when necessary, ensuring that professional curiosity is effectively embedded in practice. Therefore, failing to employ evidence-based assessment methods to identify and respond to signs of mental health deterioration, or to escalate concerns to senior clinicians when indicated, may be judged as falling below the reasonable standard of care.

2. National Institute for Health and Care Excellence (NICE) Principles:

NICE (2022) guidance "Self-harm: Assessment, Management and Preventing Recurrence" emphasies that risk assessment must be:

- Individualised and responsive to the patient's needs.
- Collaborative, involving the patient and, where appropriate, their family or carers.
- Informed by exploration of intent, context, and protective factors.
- Not reliant on prediction tools or static categorisation.

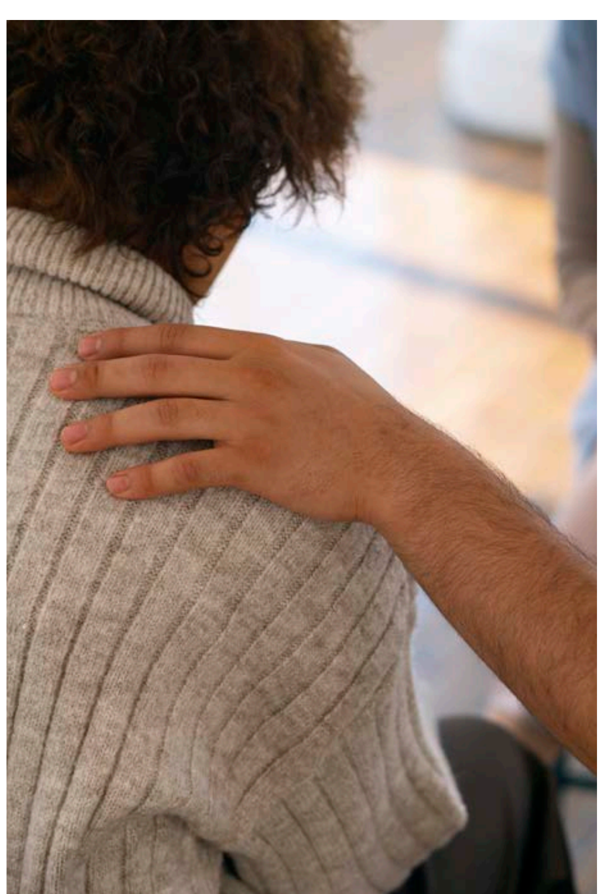
NICE places particular importance on formulation, contextual understanding, and active engagement rather than passive observation. Although written for multidisciplinary teams, these principles reflect what a mental health nurse exercising professional curiosity would reasonably be expected to do: probe uncertainty, explore the wider context, and avoid superficial or checklist-driven assessments when working with individuals who have self-harmed or who may be at risk of suicide.

3. Local Policies, Protocols and Contextual Factors:

Risk assessment in clinical practice is shaped not only by national guidance but also by local policies, multidisciplinary processes, supervision arrangements, and team structures. Mental health nurses may be required to complete comprehensive assessments, brief crisis reviews, or ongoing observational work, and the expectations around professional curiosity will differ accordingly.

The depth of inquiry will naturally vary depending on the clinical context, such as:

- The acute nature or severity of the patient's presentation.



- The nurse's seniority, professional experience, and clinical role.
- Whether it is an initial risk assessment or a review.
- The availability of senior medical input.
- The extent and availability of collateral information.
- Organisational pressures, such as high patient caseloads, staffing shortages, time constraints, competing ward demands or limited access to supervision.

Because there is no nationally prescribed method for carrying out a risk assessment, courts and experts must consider whether, in the specific context, a reasonable and responsible mental health nurse would have recognised the need for deeper exploration.

The contextual factors outlined above are meant to highlight both the complexity of clinical practice and to provide a balanced approach to evaluating professional curiosity. While each case is unique, considering these factors offers a practical framework, helping to bring clarity when assessing whether a reasonable standard of care was met in a specific context.

How Evidence Helps Determine Whether Professional Curiosity Was Exercised

In clinical negligence claims related to mental health care, allegations of omission frequently require careful reconstruction of a risk assessment process. This reconstruction typically relies upon contemporaneous records, such as clinical notes, observation charts, risk assessment documentation, multidisciplinary team discussions and witness statements. Capturing professional curiosity is arguably challenging because it often occurs in the moment through verbal exchanges or clinical reasoning that is not necessarily reflected in documentation. However, whilst challenging, it is not impossible to reflect professional curiosity in documentation, even when notes are brief, they can still demonstrate that the clinician such as a mental health nurse actively engaged with the patient's presentation, explored uncertainties or deliberately took time to understand risk before concluding upon an intervention.

Documentation might note that the nurse directly asked about suicidal thoughts, explored a patient's ambivalence, documented changes in presentation or referenced collateral information from family. For example, a note might say "Patient reported feeling low but denies current intent to harm self. We discussed recent overdose and explored whether thoughts have returned since discharge from hospital and patient described ongoing ambivalence but stated he will seek support if urges increase. Patient's mum reports increased withdrawal over past week and remains concerned.". This entry demonstrates that, rather than simply accepting the patient's denial of suicidal thoughts, the nurse explored further by eliciting ambivalence, considering historical risk factors, and incorporating collateral information from a family member. By doing so, the nurse demonstrated a thorough approach to assessing risk. This helps show that their actions aligned with the expected standard of care, addressing uncertainty rather than overlooking potential concerns.

Conversely, certain documentation patterns may raise questions as to the depth of risk assessment. In the context of a mental health ward for example, the contemporaneous records may include repetitive and vague descriptions of the nursing observations of the patient's mood or behaviour, such as "no concerns", "settled" or "presented as calm and maintained low profile in bedroom". In circumstances where recent events of harm occurred, or an acute deterioration in mental state was known, the absence of any reference to a nurse's direct inquiry into current risk factors could raise concerns. Such documentation might suggest that the assessment was more passive rather than active. Still, it would be important to understand the entire context before drawing a conclusion.

Conclusion:

In conclusion, professional curiosity is not an abstract ideal, but rather a practical aspect of delivering sound, reasonable care in mental health risk assessment. When professional curiosity is exercised, it may uncover risks that can be addressed early, potentially preventing harm. Conversely, a lack of curiosity could mean missed opportunities to intervene. For solicitors, understanding this causal link helps them evaluate whether a failure to explore uncertainty might have contributed to the outcome, and whether that outcome could have reasonably been avoided. Ultimately, for solicitors, determining whether professional curiosity was proportionately exercised is central to assessing whether the standard of care was met.

Alexandra Penfold,
Registered Mental Health Nurse

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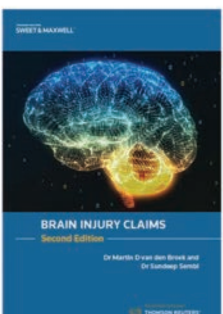

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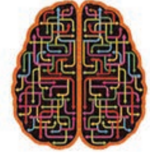

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An update on medical tourism claims: Ashamu v Get Slim in Turkey [2025] EWHC (QB)

by Dominique Smith, Barrister at Deka Chambers

This case note by Dominique Smith, who acted for the claimants, explains the factual basis of this cross-border clinical negligence claim and provides analysis about the significance of the judgment. Dominique was instructed by Phil Banks, Carly McGill and Daniella Preger of Irwin Mitchell.

Last week, the High Court considered the applicability of the Package Travel and Linked Travel Arrangements Regulations 2018 ("PTR 2018") in a cross-border clinical negligence case, namely Ashamu v Tracey Ozdemir T/A Get Slim in Turkey (2025) EWHC (QB). Whilst this case is unusual on the basis in which it was defended, it provides an interesting insight as to how the courts are grappling with the Regulations in cross-border clinical negligence claims.

Factual background

The Deceased, who was aged 26 at the time of her death, had decided to enquire about gastric bypass surgery and gastric sleeve surgery in 2018, due to concerns she had about her weight. She located the Defendant's business online and proceeded to enter into correspondence with them about their surgical packages. The Defendant was offering multiple types of surgical package, which included accommodation at a hotel, transfers, tests, surgery, and aftercare, at an all-inclusive price. The Deceased decided to book a gastric sleeve package and was informed that she needed to book her own flights before the package could be booked. She proceeded to do so and was subsequently sent a booking confirmation and medical form by the Defendant. Whilst she had initially booked the gastric sleeve package with the Defendant, she amended this to the bypass package (which was the same package albeit a bypass rather than a sleeve, at no extra cost).

The Deceased subsequently flew to Turkey on 31st January 2019. She proceeded to undergo the bypass at Ekol Hospital on 1st February 2019 under the care of Dr Yaman. On 3rd February 2019, she was taken to theatre for a further exploratory surgery due to concerns about intestinal dilation and was then taken to ICU for observation. However, from the Deceased's arrival to ICU at 19:05 hours to 19:55 hours, no monitoring information was recorded. The Deceased was subsequently discovered in cardiac arrest at approximately 19:55 hours. CPR was undertaken and she was thereafter in a coma. It later transpired that she was in fact tragically brain dead. She was subsequently pronounced deceased on 9th February 2019.

Proceedings were ultimately issued against the Defendant in February 2022, bringing a claim under the PTR 2018 and, further or alternatively, on the basis that there was a consumer contract in existence.

Unusually, the Defendant's Defence failed to deal with numerous allegations in the Particulars of Claim. The Defendant was ultimately deemed to admit the following, pursuant to CPR 16.5:

- that English law applied;
- that there was a consumer contract in existence between the Deceased and the Defendant and that the Deceased was a consumer;
- the consumer contract contained implied terms that the surgeries, treatment and aftercare would be performed with reasonable skill and care;
- causation; and
- the Particulars of Injury.

The Defendant's position in its Defence hinged on the applicability of the PTR 2018. The Defence advanced that the Defendant was an 'introducer' and that the PTR 2018 was inapplicable on that basis.

The Defendant did not file a counter-schedule of loss, either with the Defence or in accordance with the court directions. As such, quantum was not challenged. In addition, the Defendant did not file any expert evidence, did not ask any Part 35 questions of the experts, and did not make any application to call the experts to trial. Consequently, the Claimants' expert evidence was uncontroverted.

Days prior to trial, the Defendant conceded that she was a retailer under the PTR 2018 yet contested that there was a package travel contract in existence. In addition, the Defendant put forward a new argument that the hospital was in fact the true contracting party.

The trial came before Ms Justice Obi. At trial, the Defendant confirmed that causation and quantum were not in dispute. However, during opening submissions, the Defendant attempted to retreat from the deemed admissions and advanced a case that was not pleaded. Submissions were made that there was no package travel contract in existence, despite the acceptance of retailer status before trial, and that there could not be a contract in existence due to a lack of consideration. No formal application had been made to amend the Defence to the date of trial. Ms Justice Obi summarily refused permission to amend the Defence, given the lateness of the application, the lack of any explanation as to the delay in making such an application, and the prejudice that would be caused to the Claimants.

At the conclusion of the trial, Ms Justice Obi considered the PTR 2018 and whether the Defendant was a retailer, or whether the Defendant was an organiser as the Claimants alleged. She accepted that the Defendant was in fact an organiser, selling and offering for sale packages at an all-inclusive price that combined surgery, transfers, multi-night hospital accommodation and hotel accommodation, and aftercare. There was nothing to suggest in the marketing material and contractual communications with the Deceased that the true contracting party was the hospital. The Defendant had accepted she was selling surgical packages and utilised language in marketing and contractual communications including "our surgeon" and "we", which was inconsistent with the role of a mere introducer. Further, the Deceased made a single payment upon arrival to the hospital from which the Defendant received a payment. Ms Justice Obi noted that the Defendant's position had shifted over time and that the Defendant had conceded retailer status under the PTR 2018, which presupposed the existence of a package. Irrespective of the Defendant's assertions, Ms Justice Obi was of the view that the Defendant was an organiser within the meaning of Regulation 2(1). Notwithstanding that, in her findings, she considered that the tourist service under Regulation 2(6) was medical tourism as the surgery accounted for a significant proportion of the combination and was an essential feature of it and did not accept the Defendant's arguments that hospital accommodation was not accommodation (albeit, there was also hotel accommodation included in the package).

Whilst the Defendant attempted to argue at trial that there was no sufficient consideration (although it was again not pleaded), Ms Justice Obi disagreed. As such, liability was made out under the PTR 2018. In any event, she considered that liability would arise under the consumer contract route irrespective of whether her analysis of the PTR 2018 was correct as a result of the deemed admissions.

Finally, the Defendant had raised an argument about agency at trial, alleging that the Defendant was an agent for Ekol Hospital. Ms Justice Obi noted for completeness that the Defendant had not clearly identified Ekol Hospital as the principal to the contract. On that basis, she did not consider the agency argument had merit, as the principal to the contract was undisclosed thus the Defendant would be liable for the performance of the contract.

Consequently, the Claimants were awarded damages in excess of £800,000.

Analysis

This was an unusual case, but one which brings some clarity to the meaning of tourist services under the PTR 2018 and to the meaning of accommodation. It would be unusual in this author's view if tourist services did not include medical tourism, given the breadth and scope of this tourist activity around the world. It is also interesting to note the court's view that hospital accommodation can fall within the meaning of accommodation under the PTR. That said, this was a case in which the package included hotel accommodation in any event.

It appears that more cases of this nature are likely to come before the courts, given the growing popularity of surgery abroad, and it will be interesting to see the growing jurisprudence on the PTR 2018 and its interaction with cross-border clinical negligence claims.

RONALD A MILLER

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CONSULTANT UROLOGICAL SURGEON/UROLOGIST

I have more than 30 years of consultant urological experience having been Head of Department at The Whittington Hospital, Honorary Senior Lecturer at the Institute of Urology, University College and Royal Free Hospitals. I now work privately.

I am a recognised expert in endoscopic renal, bladder and prostate surgery with more than 250 publications. I have specialist experience in gynaecological injuries, cauda equina cases, and urological cancer management (previously Chair of NLCN (urology) responsible for cancer standards). I regularly report on vasectomies, circumcision, torsion, and general urology cases.

I undertake 100 cases per year; 10% single expert, 20% defendant, and 70% claimant work. I am fully trained in medico-legal work, and was voted Urology Expert Witness of the Year 2022 and 2023. Terms and conditions and my CV can be viewed on my website www.ronaldmiller.com I receive instructions from most of the major medico-legal litigators in the United Kingdom and Southern Ireland both claimant and defendant.

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Mr Martin Brett

General and Gastro-Instestinal Surgeon

MB BS, MA, FRCS, ChM

Mr Martin Brett is a consultant general and gastro-intestinal surgeon based in Warrington since 1995. He recently retired from face-to-face clinical practice but continues to be an appraiser at Warrington/Halton Hospitals and is engaged in surgical education and teaching.

He is registered with the General Medical Council and is appraised annually.

His key areas of experience are:

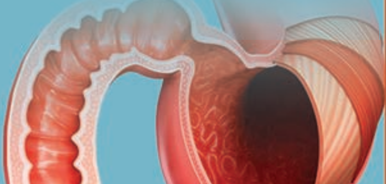
- Surgery for gastro-oesophageal reflux
- Surgery for gall stones and common bile duct stones
- Hernia repair surgery
- Emergency general surgery in children/adolescents

Gastro-oesophageal reflux is a major interest and Mr Brett has experience of providing a service for all aspects of management, including investigation (endoscopy, oesophageal manometry, 24 hour oesophageal pH study) and surgical treatment (anti-reflux surgery).

His laparoscopic experience includes laparoscopic cholecystectomy, laparoscopic antireflux surgery and laparoscopic inguinal hernia repair, primary and recurrent.

Up to 2016 Mr Brett participated in a General Surgical Emergency rota involving management of General Surgical and Gastrointestinal Emergencies, including Gastrointestinal Haemorrhage. This included assessment of both children and adults. He was also part of a tertiary oesophago-gastric cancer resection service. As part of these services he provided specialist therapeutic upper gastrointestinal endoscopy, such as oesophageal dilatation and oesophageal stent placement. After working in the independent sector, he stopped face-to-face practice at the end of 2023.

His Medicolegal work includes both Personal Injury and Negligence / Breach of Duty cases within his fields of experience. He has been instructed by parties for both claimants and defendants.



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Mr. Peter Asaad

Consultant General & Colorectal Surgeon (NHS)
Expert Witness (developing practice)

BM MSc FRCS(Eng)

Mr Asaad is a UK Consultant in General and Colorectal Surgery with broad experience in both elective and emergency practice. His work covers the full spectrum of general and colorectal surgery, including cancer pathways, acute abdominal presentations, benign disease, and complex operative decision-making.

He has extensive experience in cancer referral systems (including Two-Week Wait and Straight-to-Test pathways), laparoscopic colorectal surgery, peri-operative planning, and the management of post-operative complications. His practice is aligned with current NHS standards and multidisciplinary decision-making.

In medico-legal work, Mr Asaad provides clear, independent, and objective opinions on diagnosis and assessment, consent, operative and non-operative decision-making, intra-operative conduct, post-operative care, and complication management, grounded in contemporary clinical practice.

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Fraud or Force: Using objective crash data in personal injury claims

by Craig Arnold, Chartered Forensic Practitioner at Hawkins.

Since July 2024, every new vehicle sold in the EU must have event data recorder (EDR). These devices record crash data, such as vehicle speed, driver inputs, seatbelt usage, and other information that is vital to collision investigators. While this regulation only applies in the EU, many manufacturers provide coverage for vehicles sold in the UK; some manufacturers have been providing access since around 2012. Although an EDR may seem similar to a black box on an aircraft, they are actually very different, but can be equally helpful. They do not capture voice recordings, but some modules within the vehicle may capture video and/or still images, although their availability is limited at present.

When a car is being driven the EDR, which forms part of the vehicle's airbag (ACM) or restraint control module (RCM), is constantly monitoring the vehicle. When an impact is detected, the module decides whether an airbag and/or seatbelt pretensioner (which removes slack from the seatbelt) deployment is appropriate. If the module determines such a deployment appropriate, it will 'trigger' them and the airbags and/or pretensioners will deploy. In EDR cases, this is referred to as a 'deployment event'. When a deployment event occurs, in most cases, the EDR will record and store the crash data indefinitely. Where the module detects a potential crash event but does not deem the deployment of airbags and/or pretensioners necessary, this is considered a non-deployment event. When such an event occurs, in most cases, the EDR will record and store crash data, but it may be overwritten if further non-deployment events occur.

Accessing this data is relatively straightforward. Our data recovery equipment can be connected to the vehicle's on-board diagnostic (OBD) port when the vehicle has power (Figure 1). If the vehicle has sustained significant damage, the module can be removed and downloaded in a lab or workshop environment (Figure 2).

Figure 1: EDR download being conducted on the vehicle, with the recovery equipment connected directly to the vehicle's OBD port.

Figure 2: EDR data being recovered directly from the module at Hawkins forensic lab in Manchester.

Use cases

Such objective crash data is clearly useful in any investigation of a road traffic collision, and there are many scenarios where this data could be used to assist a case. For the purposes of this article, however, I have used two specific case studies where this kind of data has been especially useful. The first involves a fraudulent personal injury claim, and the second involves a serious head injury. To ensure anonymity, the details of the case have been changed, but the manner in which the data was used remains.

Case study 1: Vehicle fraud

A claim was received involving two vehicles, a van and a car. The reported circumstances were that the driver of the van approached and stopped at a give way controlled junction and was struck in the rear by the car that was directly behind. Personal injury claims were received from 8 different people. It was reported that the van had two passengers, and the car had four passengers. The collision had occurred on a quiet rural road and there were no witnesses, physical evidence, or video.

The insurers were suspicious of the reported circumstance and requested further investigation. Given the age and make/model of the vehicles involved, the first step was to consider whether either vehicle had captured crash data. The airbags on the car had deployed, so there was a good chance that data had been captured. Hawkins recovered and downloaded the module. There were two crash events recorded. When analysed, we determined that the two events occurred only a few minutes apart. The data from the EDR showed both events were frontal impacts, but the first was a non-deployment event, and the second was a deployment event. Often, multiple activations during a collision are not uncommon, but in the specific circumstances of this case, it was. The profile of the collision established through analysis of the data showed that both collisions were very similar. The second event occurred at a slightly higher speed, but otherwise the events were mostly identical.

What stood out particularly was that the witnesses from the van recalled only a single impact. The question that arose was, how likely it was that the vehicle had been involved in two separate extremely similar collisions only minutes apart. The answer came from the EDR data. At the point the events were recorded, the EDR logged the vehicle's mileage. Figure 3 is an excerpt from the recovered data which shows that the vehicle mileage at the time of both events was identical. The ignition had also been cycled three times between the two events.

Further analysis of the data revealed additional inconsistencies. When an event is captured, the EDR captures the seatbelt status of the occupants. This data revealed that the three rear occupant's seatbelts were not in use at the time of the activation. This could suggest that the occupants had failed to wear a seatbelt, and the insurer or lawyer may consider whether to allege contributory negligence. In this case, however, that was unnecessary as the seat occupant sensor also recorded by the EDR, showed that neither the left rear passenger seat, nor the right rear passenger seat detected any occupant at the time of the activation. The centre seat did not have such a sensor, but at most, there could only have been three people in the vehicle and not the five that had been claimed.

Further investigation found that the vehicle likely had one impact, insufficient to deploy the airbags, before reversing and completing a second attempt deploying the airbags. The EDR data was essential in determining how the collision/fraud had occurred.

Hawkins - EDR Data recovery		
Crash Event 1	Recording Status, Front/Rear and Side Crash Information	Complete (FRONT)
	Odometer signal (miles [km])	12,904 [20,767]
	Trip count (times)	1,643
	Time count (msec)	24,300
	Time count input system	Normal
Crash Event 2	Recording Status, Front/Rear and Side Crash Information	Complete (FRONT)
	Odometer signal (miles [km])	12,904 [20,767]
	Trip count (times)	1,646
	Time count (msec)	445,000
	Time count input system	Normal
Seatbelt status	Safety Belt Status, Driver	ON
	Safety Belt Status, Front Passenger	ON
	Safety Belt Status, 2nd Seat, L	OFF
	Safety Belt Status, 2nd Seat, R	OFF
	Safety Belt Status, 2nd Seat, Center	OFF
Seat sensor status	Occupant Information, Front Passenger	Occupied
	Occupant Information, 2nd Seat, L	Not Occupied
	Occupant Information, 2nd Seat, R	Not Occupied
	Occupant Information, 2nd Seat, Center	SNA

Case study 2: Occupant injury and biomechanics

As discussed, it is not only fraud cases where this data is invaluable. EDR evidence can also support a more defensible discussion around injury causation. It does not tell you how an occupant behaved during a collision, but the data can be used to reconstruct the forces of the collision and corroborate the injury biomechanics.

In this case, a claim was received regarding a significant side impact on a major 'A' road. The Claimant was a rear seat passenger of the vehicle which was turning right across the dual carriageway. During the turn, the vehicle was struck by an oncoming vehicle at high speed. During the impact, the passenger was thrown free from her seatbelt and came to rest partially in the footwell, having sustained a serious traumatic brain injury (TBI).

Contrary to the previous case study, the EDR data showed that the seatbelt status was 'ON' and that the seat occupant sensor detected a person in the seat at the time of the collision. Now, simply because the data shows the seatbelt status was 'ON' does not mean it was actually worn and/or worn correctly. For this aspect, a physical examination of the seatbelt was required to confirm whether the seatbelt had been worn properly at the time of the collision.

The EDR data also provided the 'principal direction of force' experienced by the vehicle during the collision and the subsequent change in velocity, or 'delta-v', which was used to determine the severity of the 'crash pulse'. Combined with forensic evidence from the vehicle's interior, which identified the contact points from the Claimant's head, we were able to reconstruct the Claimant's kinematics and the likely magnitude of the force with which they struck their head.

This was a good example of how traditional methods of collision investigation, such as vehicle examination, can be used in conjunction with digital evidence to support robust conclusions.

The benefit of having objective data to support decisions around injury biomechanics and occupant kinematics during a collision can prove vital. In this case, it was used to determine that the seatbelt, whilst likely worn, had been left with too much slack, which allowed the occupant to come free in what is often referred to as a 'submarining' incident. The additional slack on the seatbelt meant the occupant was not sufficiently restrained, and as such, the Claimant's head struck the interior of the vehicle and they subsequently came free from the seat. This evidence was also referenced heavily by the medical expert witnesses in their assessment of the injury mechanism and severity.

Guidance for lawyers and insurers

In a previous piece I wrote on this topic, I recommended the TIP framework (Triage, Instruct, Preserve) for those managing RTC claims in insurance or legal contexts. This approach ensures the data is considered and captured, whilst ensuring costs are kept in check.

Triage

As soon as possible after notification of a claim, try to establish the make, model, and year of the vehicle(s) involved. Where the vehicle was manufactured after 2024, there is a good chance the vehicle is supported for download. Crash data may not necessarily have been captured as this ultimately depends on the severity of the collision, but that aspect can be determined later. Ensure the vehicle is retained whilst a decision is made on data recovery.

Instruct

One of the potential pitfalls with EDR data is that the evidence is presented in an extremely user-friendly manner (PDF file), which means it is easy for the data to be read and interpreted (potentially incorrectly) by an unqualified or inexperienced analyst. There are many aspects that must be considered, and the data has the potential to mislead if not interpreted correctly. It is crucial that an appropriately qualified expert is instructed in cases that are likely to involve EDR data. An early call to an EDR or vehicle-data expert will also help determine if the vehicle is supported and the likelihood of recovering crash data. Following this, take immediate steps to preserve the data. It may also be useful to consider other forms of digital data that may be available from the vehicle. EDR data is one aspect, but there are other sources of digital data that may be available and can be used to corroborate and complement traditional collision reconstruction methods.

Preserve

Clearly, storage costs can be significant, and there is often a need to process the vehicle quickly to prevent mounting costs. Thankfully, an early instruction to remove the module, which is about the size of a paperback book, means no delays in processing the vehicle. The module can simply be removed and stored for analysis at a later date, if and when a claim progresses.

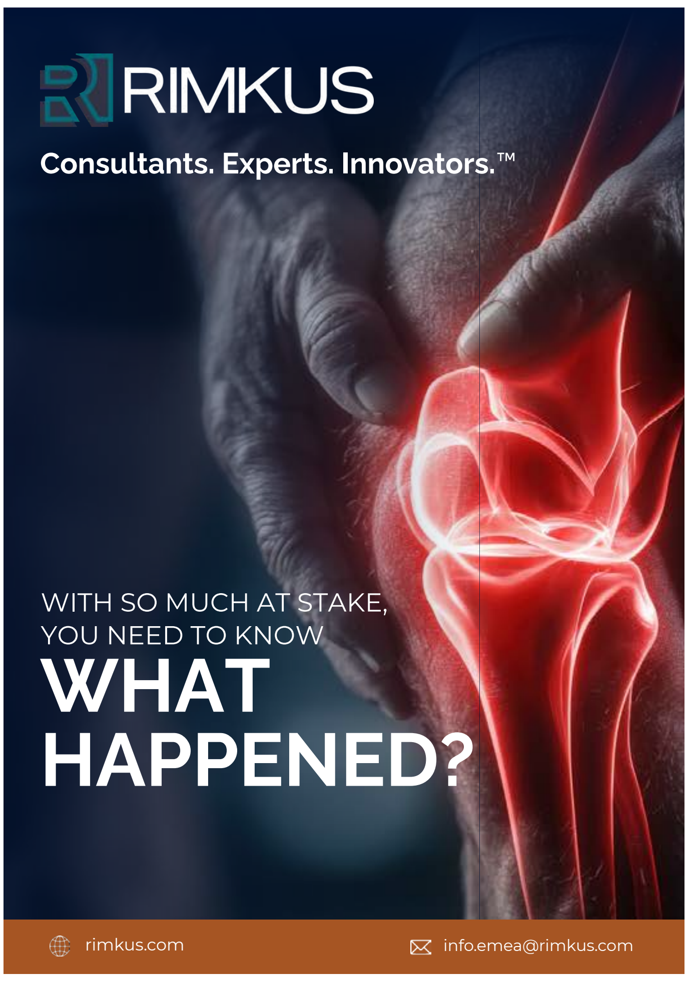
None of these steps need to involve significant cost. If detailed analysis is not justified, there does not need to be further action, but having captured the data it will prevent the scenario whereby a significant claim is received after a vehicle has been disposed of.

About the authors

Craig Arnold is a Chartered Forensic Practitioner in road collision investigation. Craig has given expert

evidence in criminal, civil, and coroner's courts on a variety of cases involving catastrophic injuries and fatalities. He specialises in vehicle-borne data and forensic video analysis and has extensive casework experience, including cases in the UK and internationally, including South America, Africa, and Europe. He has a particular interest in new modes of mobility, including connected and autonomous vehicles, and e-scooters. Craig is part of the RTC team at Hawkins and is their RTC Development Manager. He regularly provides expert evidence to insurers and law firms involved in RTC claims.

Adam Barrow is an expert in forensic collision investigation and injury biomechanics, blending extensive field experience with a strong research background. Throughout his career, he has attended hundreds of crash scenes to perform full forensic reconstructions, correlating medical and post-mortem data to pinpoint specific injury mechanisms. With over 40 technical publications to his name, Adam's applied research has directly influenced international safety regulations, refined crash test dummy technology, and advanced the design of both vehicle safety systems and road infrastructure.



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Weight loss drugs in sport – WADA's watchlist, performance trade offs & what athletes need to know

by Georgina Rothwell, Thorrun Govind, Catherine Forshaw at Brabners.

GLP-1 drugs like Ozempic and Mounjaro have recently made waves in sport with elite athletes – including former tennis player Serena Williams – bringing attention to their use. Originally developed for diabetes and weight management, these medications are now part of a broader conversation about performance, recovery and regulation.

While GLP-1s haven't been banned by the World Anti-Doping Agency (WADA), they're being actively monitored. This is a formal step used to track substances that might enhance performance, pose health risks or undermine the spirit of sport. That status matters because labs are already looking for patterns of use and – if evidence of abuse emerges – GLP-1 drugs could shift from 'watched' to 'prohibited' in a future 'Prohibited List' update.

Here, Georgina Rothwell, Thorrun Govind and Catherine Forshaw explore what's known, what's emerging and what athletes need to consider as interest grows and scrutiny intensifies.

Why sport is watching Ozempic

Ozempic is the brand name for semaglutide – a GLP-1 receptor agonist originally designed for type 2 diabetes. At higher doses, it was later approved for chronic weight management. In simple terms, semaglutide helps the pancreas to release insulin when needed, suppresses glucagon, slows gastric emptying and reduces appetite. These effects improve metabolic control and make it far easier to maintain a calorie deficit.

This is why endurance and weight-sensitive sports are paying attention. Less body mass can mean a better power-to-weight ratio without living in a constant state of hunger that typically comes with cutting weight. It's a clear performance incentive which is precisely why WADA placed GLP-1s on its 'Monitoring Program'.

Why athletes are considering GLP-1s

Health improvements

When used for their intended medical purposes, GLP-1 drugs can deliver substantial health benefits. Athletes who meet clinical criteria may see better glycaemic control, improved cholesterol and triglycerides and lower rates of major adverse cardiovascular events. For master athletes or those with metabolic issues, that can be life-changing in the long run.

However, these benefits are documented in therapeutic contexts with medical oversight. Translating them directly into safe performance gains isn't automatic.

Competitive advantages

The most compelling sport-specific draw is improved relative power. If your 'engine' stays the same while the 'chassis' gets lighter, climbing and long-course economy can improve. That's why some swimmers, cyclists and triathletes are discussing the use of GLP-1s and why WADA's science leadership has publicly flagged possible advantages based on weight-to-power dynamics.

It's important to note that these advantages aren't universal. Sprint power, repeated accelerations and collision resilience depend heavily on lean mass. If your weight loss includes muscle (and for many athletes, it does), the net effect can be neutral – or even negative.

Side effects that shape performance

Athletes often experience two very different realities on GLP-1s. On one hand, appetite suppression and steadier blood sugar can make it easier to stay in a small, consistent energy deficit without the mood swings and constant cravings that sabotage dieting.

On the other hand, a meaningful portion of weight loss can be lean tissue – especially when protein

intake and resistance training aren't carefully protected. This erodes peak power, repeatability and injury resilience.

In addition, slowed gastric emptying raises the odds of nausea, reflux and an unsettled stomach during hard training and racing. This can derail in-race carbohydrate plans and — over time — push you towards low energy availability and relative energy deficiency in sport (RED-S). The result is a classic short-term/long-term trade-off — while it may be easier to get lighter, you can become a lot less durable if the basics aren't nailed.

Half-life, washout & why timing matters

Semaglutide has a half-life of roughly a week. While this means that it's great for once-weekly dosing, clinically relevant levels linger for weeks after you stop. With albumin binding and slow clearance, it can remain in your system for about five weeks following the final injection.

From a practical standpoint, the fact that semaglutide stays in your system for weeks after the last dose affects how you should plan your training and competition. It can influence when side effects like nausea or gastric discomfort show up during key sessions and it limits your flexibility if you need to stop before a major event or respond quickly to changes in anti-doping rules.

Permitted use, concentrations & how it shows up in tests

Semaglutide isn't currently on WADA's Prohibited List so there are no threshold concentrations or decision limits to worry about right now — just having it in your system isn't an anti-doping rule violation. That said, WADA's strict liability principle still applies to prohibited items and substances can move from monitored to banned if evidence justifies it. Stay alert to that possibility each January when the new List and Monitoring Program are released.

If you have a legitimate medical need, speak to your team doctor and your anti-doping organisation about a Therapeutic Use Exemption (TUE) and keep pristine documentation.

On detection, semaglutide behaves differently from many classic doping agents. Very little of the intact drug molecules appear in urine so anti-doping labs focus on blood tests. This includes dried blood spots (DBS) and use liquid chromatography–mass spectrometry to detect the modified peptides. WADA has specifically funded method development for GLP-1 agonists like semaglutide, liraglutide and tirzepatide (a dual GIP/GLP-1 receptor agonist more commonly known as 'Mounjaro'), reflecting the interest in targeted surveillance as usage grows. In practice — if a lab looks for it — semaglutide can be found in blood for weeks due to its pharmacokinetics.

What recent reporting & sport-specific chatter tell us

Mainstream and specialist outlets have chronicled the tension between potential advantages and risks. Triathlon and endurance publications have highlighted rapid weight drops alongside improved lab markers — but they also report that athletes are battling gastrointestinal issues at intensity and struggling to fuel long efforts. This is a deal-breaker in marathon, long-course triathlon or stage racing.

Meanwhile, sport pages have documented the cultural pressure around leanness in cycling and the broader conversation sparked when elite athletes like former professional tennis player Serena Williams have discussed GLP-1 use. All of this has sharpened WADA's focus on whether use in elite circles is drifting from therapy into abuse.

Where this could be headed

WADA's monitoring isn't just a formality — it's a data-gathering step that's preceded prohibition for other substances when patterns of abuse became clear. Detection methods for GLP-1s in blood and DBS are improving and anti-doping organisations are steering athletes towards authoritative medication status tools rather than social media lore.

For athletes, the strategic question isn't simply "does a lighter body help?" but "can I stay fast, fuelled and robust while managing the side effects — and do so within rules that might tighten?" The answer varies by discipline, physiology and support structure but the common thread is that performance still rests on adequate energy availability, muscle function and reliable gastrointestinal tolerance on race day. Drugs don't change those fundamentals.

Talk to us

Our sports law team is widely recognised as one of the most experienced and multidisciplinary groups in the industry, advising athletes and organisations on complex regulatory issues.

With specialists in anti-doping compliance – including UK Anti-Doping (UKAD) Accredited Advisor Catherine Forshaw and practising pharmacist and trusted national health commentator Thorrun Govind – we provide clear, practical guidance on WADA rules, TUEs and the evolving status of substances.

If you need advice on permitted use, monitoring requirements or risk management, get in touch today for a confidential consultation by calling **0333 004 4488** or emailing **hello@brabners.com**

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Mr Raj Kumar is a Consultant Orthopaedic Surgeon with a special interest in foot and ankle surgery, and general trauma. Mr Kumar is based at Lancashire Teaching Hospitals which is a major trauma centre dealing with serious injuries that are life changing and could result in serious disability, including head injuries, severe wounds and multiple fractures. He is part of the trauma service with a special interest in lower limb reconstruction surgery. Mr Kumar gained experience in lower limb reconstruction working at the trauma unit in Belfast.

Mr Kumar undertook his foot and ankle fellowship at Wrightington Hospital. He was granted a Fellowship of the British Orthopaedic Foot and Ankle Society, which he used to gain experience in ankle arthroscopic surgery under the internationally renowned Professor Van Dyke at Amsterdam.

Mr Kumar is involved in teaching and training nurses, physiotherapists, medical students and Orthopaedic Registrars. He has students from the University of Manchester who undertake various clinical attachments with him. He is an Honorary Senior Lecturer and examiner for the University of Manchester Medical School.

Mr Kumar provides a high quality, patient-centred foot and ankle service. His experience covers the entire spectrum of orthopaedic foot and ankle disorders. Besides the more common foot and ankle procedures, he performs ankle replacements, ankle arthroscopy, complex hind foot fusions, deformity corrections, and ligament and tendon reconstructions about the foot and ankle.

Mr Kumar has expertise in assessing personal injury, soft tissue and sports injury, complex polytrauma and low velocity injuries.

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Part 36 costs consequences and liability-only offers: a key development

by Josephine Lunnon, Pupil Barrister at 1 Crown Office Row.

Smithstone v Tranmoor Primary School [2026] EWCA Civ 13

In Smithstone, the Court of Appeal addressed a key point of principle and uncertainty concerning cost consequences for liability-only Part 36 offers and marked a significant development for practitioners. The Court confirmed that Part 36 costs consequences can indeed be triggered by liability-only Part 36 offers, overturning and clarifying the position outlined in Mundy v TUI UK Ltd [2023] EWHC 385 (Ch). This decision is likely to prompt a rise in the use of such offers.

Judgment was handed down on 16th January 2026 by Lord Justice Bean, with Lord Justice Phillips and Lord Justice Stuart-Smith concurring.

Background

The Claimant was a child who suffered a minor injury whilst at school in September 2018, and the claim was accordingly entered into the Low Value Fixed Costs regime by virtue of its modest value.

A Part 36 offer was made by the Claimant to settle liability on a 90/10 basis on 13 December 2018. This was rejected six days later by the Defendant. The matter, once proceedings had been issued, was allocated to the Fast Track and listed for trial in November 2020.

The Claimant made a without prejudice offer of settlement in March 2020 for £3,500, which was never accepted.

The Defendant's witness failed to appear at trial and the claim was settled at Court for £2,650. The Claimant being a child, the settlement required approval by the Court, which was granted by Deputy District Judge Khan. The Claimant contended that the case fell outside the fixed costs regime as CPR 36.17 was engaged, which provides for its adverse cost consequences to apply:

Costs consequences following judgment

1. This rule applies where upon judgment being entered—
   a. a claimant fails to obtain a judgment more advantageous than a defendant's Part 36 offer; or
   b. judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant's Part 36 offer......
2. For the purposes of paragraph (1), in relation to any money claim or money element of a claim, "more advantageous" means better in money terms by any amount, however small, and "at least as advantageous" shall be construed accordingly.

DDJ Khan determined that the fixed costs regime applied, seemingly on the basis that the Claimant's offers "did not bite" for CPR 36.17, that it was not unreasonable for the Defendants to import their defenceup to the day of trial for purposes of assessment, settlement at the door of Court is "not unusual", and the settlement sum agreed upon was much lower than the Claimant had ever proposed.

Over three years later, the Claimant was granted permission to appeal against this costs decision by His Honour Judge Baddeley, who later heard the appeal in August 2024.

HHJ Baddeley dismissed the appeal on the basis that he was bound by Mundy (outlined below) and observed that there was never a concession or apportionment of liability; "A global settlement was put to the deputy district judge, albeit without any discussion of discounts from full liability damages" [21].

Mundy v TUI UK Ltd [2023] EWHC 385 (CH)

In Mundy, the claimant proposed two offers to settle; one to settle liability on a 90:10 percent basis in favour of the claimant, and the other to accept £20,000 in full and final settlement of the whole claim. A counteroffer was made later by the defendant to pay £4,000 in full and final settlement.

At trial, the Judge found in favour of the claimant, but awarded total damages of £3,805.30. The judge ordered that the defendant pay costs up to the date of expiry of the defendant's offer and the claimant pay the defendant's costs thereafter. The claimant appealed on the ground that adverse costs consequences pursuant to CPR 36.17(1) should be applied, since the 100% win on liability was more advantageous than the 90:10 percent liability offer the defendant had rejected.

The subsequent appeal was dismissed by Mrs Justice Collins-Rice who found that allowing adverse cost consequences pursuant to CPR 36.17(1) for a 90:10 split liability offer risked a situation where a claimant could fail to beat a defendant's financial offer and have beaten their own liability offer; in this scenario, as the Court of Appeal summarised:

> “*This would engage both CPR 36.17(3) and CPR 36.17(4) which are otherwise mutually exclusive. Both parties would thus recover costs for the same periods, but only the Claimant would receive the enhancements in CPR 36.17(4)*”.

Mrs Justice Collins-Rice expressed concern that 90:10 liability offers could be used as a “unilaterally imposed insurance policy to reverse the losses otherwise provided for by CPR 36.17”. Fitting such an offer into the terms of CPR 36.17(1)(b) would, she outlined, strain the carefully balanced language of the provision and undermine the “clarity, simplicity and predictability” essential to the “incentivising effects” of the same. Further, a 90:10 liability offer did not amount to an offer to settle the claim on quantifiable financial terms, preventing comparison between the defendant's offer and the claimant's actual award.

The appeal

There were four issues for determination by the Court of Appeal:

1. Was there a ‘judgment’?
2. If so, can a 90:10 offer engage the provisions of CPR 36.17(4)?
3. If so, on the facts of this case, was the outcome “at least as advantageous to the Claimant as the proposals contained in the Claimant's Part 36 offer”?
4. If not, is it unjust to confine the Claimant's solicitors to recovering fixed costs?

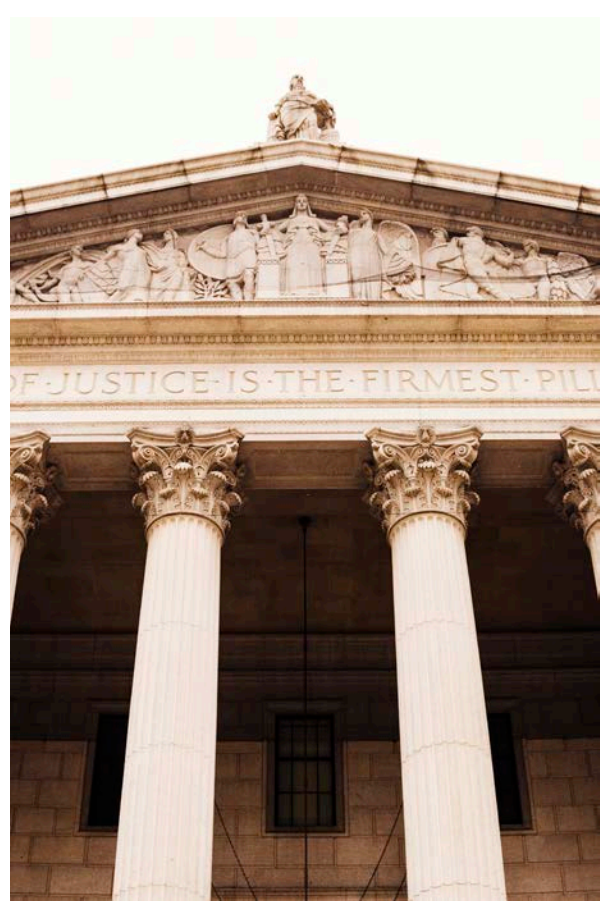
The second issue was the “key” focus of the appeal [31], and its determination likely the most impactful in practice.

1. Was there a ‘Judgment’?

The Court considered whether or not the N24 form headed ‘General Form of Judgment or Order’ was, in fact, a judgment suitable for CPR 36.17(1). The Court dealt with this briefly and Lord Justice Bean concluded at [30] that he had “no doubt that it [was] both a judgment and an order”, considering “any attempt to distinguish between the two terms in describing” the Form was “misconceived”. The form itself, and in particular paragraphs 4 and 3 thereof, could accurately be described as either a judgment or an order.

2. Liability offers and CPR 36.17

The Court overruled Mundy “on the issue of principle” [35]; that principle being Mrs Justice Collins-Rice's “obiter” suggestion “that a 90:10 liability offer is ineffective as a matter of principle to engage CPR 36.17”. The Court firmly disagreed with this principle, preferring the policy considerations outlined in Huck v Robson [2002] EWCA Civ 398 andBroadhurst v Tan [2016] EWCA Civ 94, neither of which, it was noted with regret, were cited in Mundy [34].



In Huck, the Court of Appeal held that the claimant's offer to accept a 95:5 split on liability was effective so as to entitle the claimant to indemnity costs after the defendant was held 100% liable and it was considered irrelevant that the trial judge could not have so apportioned liability since it nonetheless provided the defendant with a "real opportunity for settlement". However, the Court added that if any such liability offer was self-evidently nothing more than a "tactical step designed to secure the benefit of the incentives provided by the Rule", the judge would have discretion to refuse indemnity costs [71], Huck.

In Broadhurst, Lord Dyson MR observed that the policy underpinning what is now CPR 36.17 aims to provide claimants with "generous incentives to make offers" and defendants "with countervailing incentives to accept them" [31], Broadhurst.

The crux of the Court's reasoning for overruling Mundy is at [34]:

> *"Whether litigation is complex and of high value, or straightforward and of relatively modest value, the courts should, and the Civil Procedure Rules do, encourage settlement of specific issues where the case as a whole cannot be settled. In a case where liability is to be tried before quantum the benefits of a liability-only offer in saving costs and court time are obvious, but even in a fast track case where all contested issues will be resolved by a district judge or deputy district judge in the course of a single hearing, liability-only or quantum-only offers are still to be encouraged [...] The 90:10 offer was in my view to be treated as a genuine offer to compromise, just as the 95:5 offer was treated in Huck v Robson".*

Was the outcome "at least as advantageous" to the Claimant as the Claimant's Part 36 offer?

The Court observed that the "difficulty" facing the Claimant's was that there never was a determination of liability to compare to the Part 36 offer; the Defendant had made no admissions as to the same, nor had DDJ Khan made any findings on liability. However, the Court made clear that if the Defendant had made such an admission, or DDJ Khan had found the Defendant 100% liable, "there would [have been] a case for awarding the Claimant, pursuant to CPR 36.17, costs relating to the issue of liability from the date of the Claimant's 90:10 offer" [36].

Was this an unjust result?

The Court firmly concluded that confining the Claimant's solicitors to recovering fixed costs was not an unjust result and there were no reasons to depart from the fixed costs regime. Lord Justice Bean emphasised that even if the Claimant had made an offer whichengaged CPR 36.17, it would not have been unjust for the Defendant to bear the additional costs prescribed by the Rule [37].

Conclusion

In summary, the judgment has established that Part 36 consequences can follow a liability-only offer but only where liability has been determined or admitted so that the offer can be meaningfully compared to the judgment.

Claimant practitioners must note that if Part 36 offers have been validly made with respect to liability early in proceedings and claimants wish to apply the cost consequences of Part 36 to a later settlement, they must ensure that liability is apportioned in that settlement. For 36.17 to bite in favour of claimants, the apportionment must be at least as advantageous as their original Part 36 offer.

This article was originally published on 1 Crown Office Row's Quarterly Medical Law Review

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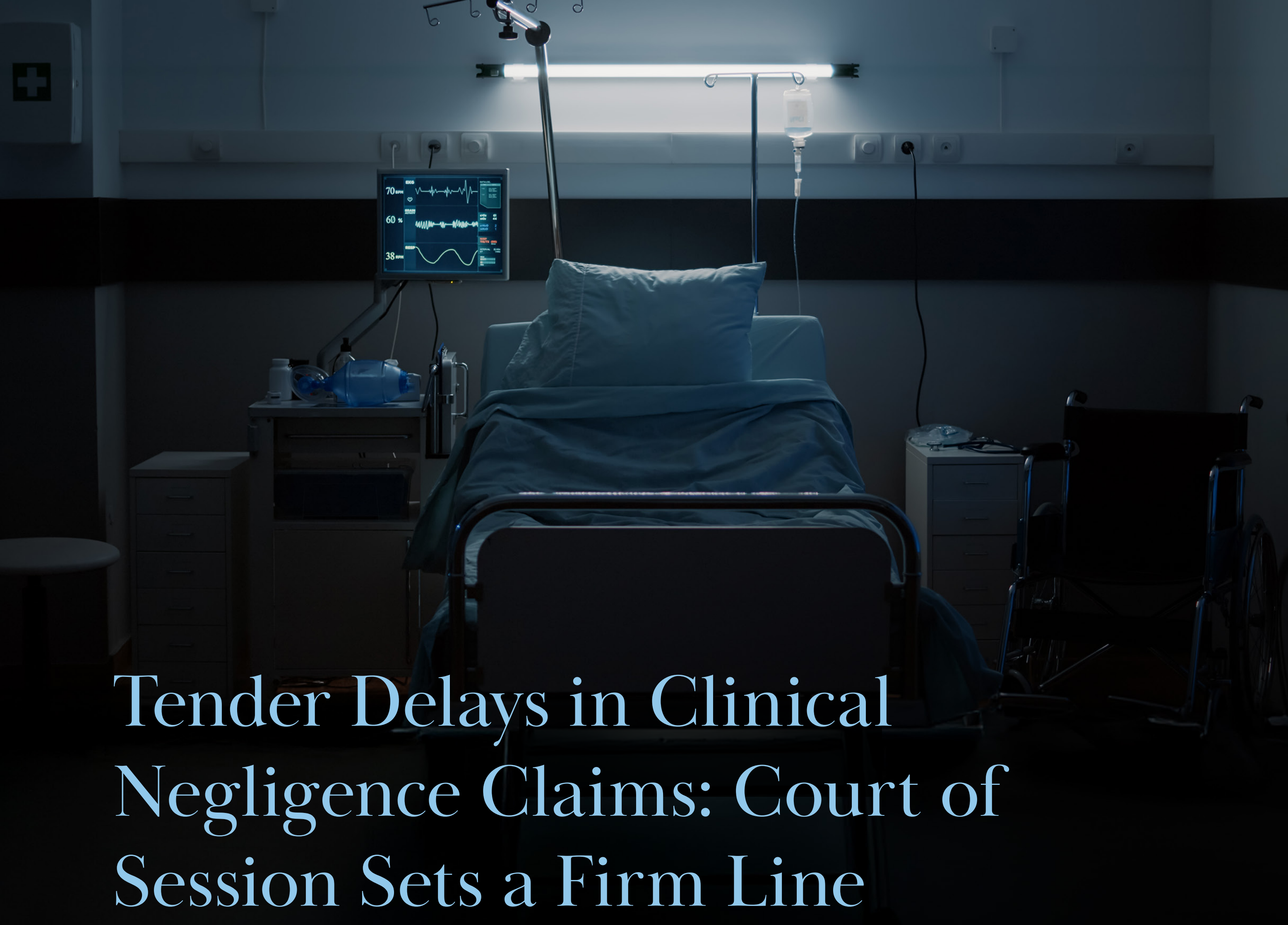

Tender Delays in Clinical Negligence Claims: Court of Session Sets a Firm Line

by Rachel Robertson, Solicitor & Jenny Dickson, Partner, Chair at MFMac.

Unreasonable delays and the disapplication of QOCS: Peter Gasper v The Partners Of Tain & Fearns Medical Practice and another.

In this clinical negligence case, the Court of Session ruled that an eight month delay in accepting a tender was unreasonable and awarded expenses to the defender accordingly. The first time this specific issue has been considered by Scotland's highest civil court, it provides helpful guidance on both the relevant factors to consider when assessing a delay and the 75% cap rule under RCS 41B.3(2)(b).

Background

The pursuer alleged that the defenders had failed to properly investigate his symptoms of prostate cancer. He claimed that his life expectancy would have been longer had he been diagnosed earlier and sought £2 million in damages.

The defenders denied liability, their position being that the cancer had already metastasised, and so earlier diagnosis would not have affected the pursuer's life expectancy. Accordingly, any award made should reflect only that his suffering would have been alleviated sooner had he received his diagnosis earlier. The defenders' position was backed by medical evidence.

The defenders lodged a tender of £30,000 on 11 December 2024. The tender was accepted by the pursuer on 22 August 2025, over eight months after it had been lodged.

Issues for determination

The court had to determine firstly whether the eight month delay was unreasonable in terms of the qualified one way cost shifting ("QOCS") rules, which outline exceptions to restrictions on pursuer liability for expenses in personal injury claims. RCS 41B.2(2)(b) allows the court to make an award of expenses against the pursuer where there has been an unreasonable delay in accepting a tender.

If there was an unreasonable delay, the court then had to determine whether it had discretion to limit

or modify the extent of expenses recoverable by the defenders, which has a 75% cap of the amount of damages awarded to the pursuer under RCS 41B.3(2)(b). The pursuer submitted that if the delay was unreasonable, it was not so unreasonable as to justify the maximum award of 75% of the costs incurred during that period. The defenders submitted that there was no scope to vary the cap and the court was constrained by the rule.

Decision

The decision was handed down by Lord Braid, who reiterated what factors the court will look at when considering whether a delay is unreasonable. Those being:

- The length of the delay
- The information available to the pursuer when the tender was lodged
- Whether further expert evidence was reasonably required before the tender could be considered
- The stage of proceedings when the tender was accepted

It was noted that no new medical evidence on causation had been obtained by the pursuer during the eight month period which could have explained the delay. It was also considered that the pursuer had sufficient material in the first quarter of 2025 to make an informed decision, based on the information and expert reports he had available. Consequently, the court ruled that the delay was objectively unreasonable, and the defenders' motion for expenses from the date of the tender was granted.

The court declined to reduce or vary the 75%, noting there is nothing in the language of the rule to suggest that the court has any power to vary it to some other percentage, nor any material before the court which justified a departure from the consequences laid down in the rules.

Comment

This decision confirms that pursuers must make decisions on tenders on the basis of evidence available and without unnecessary delay. Removing the ability to argue for leniency on the 75% cap, pursuers should be mindful that QOCS will not offer protection from cost risks if matters are unreasonably protracted. Defenders should consider early tenders to achieve quicker resolution of claims, where the information and evidence available allows.

Pyper Medical Services Ltd.

Mr Jim English
Consultant Gynaecologist & Pelvic Surgeon
LRCP&SI MB BCh BAO MD MRCOG

Jim English joined Pyper Medical Services in 2022 and is currently preparing reports on clinical negligence in Gyneacology for both claimants and defendants.

- Lead surgeon at Endometriose in Balans, Netherlands.
- Specialist in general gynaecological laparoscopic surgery and complex pelvic surgery for endometriosis.
- Was the first in the United Kingdom to advocate radical surgery in the management of severe endometriosis and was among the first in the UK routinely to perform laparoscopic hysterectomies.
- Served for a total of four years as a council member for the British Society of Gynaecological Endoscopy and in 2013 organised a joint meeting in Brighton between the British and Irish societies. Currently sits on the board of the European Endometriosis League.

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- Organ retrieval,
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Alongside my surgical role, I am a qualified Royal College of Pathologists Medical Examiner, scrutinising cases at my trust as well as working closely with HM Coroners service in North London. I currently sit on the faculty with the Royal College of Surgeons (RCS) of England, as well as in the Court of Examiners and am a Quality assessor for the RCS England.

Since 2021, I have provided precise, thorough expert reports to health boards and legal professionals, merging in-depth clinical knowledge with meticulous case evaluation. My commitment is to deliver authoritative, clear, and unbiased reports with rapid turnaround times, ensuring that your case benefits from the highest standards of professional accuracy and clarity.

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Consultation will be provided within days of written instruction and complete reports can be provided within ten days.

Causation, liability, prognosis and quantum are included, often rendering court hearings unnecessary.

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Mrs Robyn J S Webber

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My medicolegal areas of interests are; personal injury, pelvic and genitourinary trauma, clinical negligence in all aspects of urological surgery, including delayed diagnosis and complications related to implanted surgical materials.

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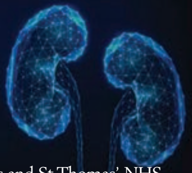

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Mr Sachin Malde is a Consultant Urological Surgeon, at Guy's and St Thomas' NHS Foundation Trust, he is also Clinical lead for functional and reconstructive urology, Guy's and St Thomas' NHS Foundation Trust and South-East London Network Lead for benign prostate enlargement.

With over 15 years experience in specialist urological practice. He provides first-class private urology services to comprehensively and rapidly diagnose and treat urological problems for male and female patients.

He has expertise in all aspects of general and diagnostic urology; uro-gynaecology; female urology; functional urology; vaginal mesh complications (TVT/TOT); iatrogenic ureteric and bladder injuries – obstetric, gynaecological, colorectal; urinary tract fistulae (vesicovaginal, rectourethral); neuro-urology (spinal cord injury, brain injury voiding dysfunction, cauda equina syndrome, bladder overdistension injury); urodynamics; urological cancer, prostate enlargement, urinary tract infections, catheters, & endourology.

Mr Malde has undertaken expert witness work since 2024. He will receive instructions from both solicitors and insurance companies, and will act for Claimant, Defendant, and single joint expert, in both personal injury and clinical negligence cases. He has undertaken specialist expert witness training. All reports are compliant with the Civil Procedure Roles Part 35 and Practice Direction 35. With considerable experience of assessing serious incidents, performing root-cause analyses, and medico-legal report writing, and serves as the Clinical Governance Lead at Guy's Certificate. He has undertaken Bond Solon expert witness and report writing training.

Approximate waiting time for next Medico Legal appointment: 2 weeks.
Approximate waiting time for report: 4 weeks.
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Consultant Obstetrician and Gynaecologist
Medico-Legal Expert Witness In Obstetrics & Gynaecology

Mr Mamdouh Shoukrey is a Consultant Obstetrician and Gynaecologist at Dorset County Hospital NHS Foundation Trust, a position he has held since 2011. He has been practising obstetrics and gynaecology for over 25 years since his qualification. He is Obstetric Risk Management lead consultant at Dorset County Hospital and Lead for Minimal Access Surgery (key-hole surgery).

Mr Shoukrey holds the Cardiff University Bond Solon Certificate in Civil Law. He has acted as an expert in civil cases, both defendant and claimant. He has given evidence in the the family court and the Coroner's courts. He is able to quickly assess the roots of any line of legal questioning and formulate strong and appropriate responses.

Turnaround time is 4 to 6 weeks for producing a CPR-compliant full medico-legal report.

In his role as Obstetric Risk Management lead consultant at Dorset County Hospital, Mr Shoukrey investigates clinical risks and medical malpractice including root cause analysis of serious untoward incidents, and child death reviews including attending a coroner's court.

Mr Shoukrey holds a Master's Degree in Advanced Gynaecological Endoscopy from the University of Surrey. At Dorset County Hospital he is the lead clinician for Minimal Access Gynaecological (keyhole) Surgery. Whilst there he has introduced new surgical procedures including Total Laparoscopic Hysterectomy and Laparoscopic Resection of Endometriosis. He routinely performs general gynaecological surgical procedures including abdominal and vaginal surgery. He also manages complex pregnancy, postnatal problems and childbirth including caesarean sections and instrumental deliveries.

Mr Shoukrey teaches at the Royal College of Obstetricians and Gynaecologists including training doctors in laparoscopic/hysteroscopic skills and emergency obstetrics including instrumental deliveries and shoulder dystocia, and is a Royal College examiner. He has presented scientific research papers at both national and international meetings, and has published articles in scientific journals in the field of minimal access surgery.

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Nuisance claims: A recent decision highlights the key role of expert evidence

by Matt Cordwent, Associate & Lauren Hunt, Trainee Solicitor at Charles Russell Speechlys.

Background

The case of Andrews & Ors v Kronospan Limited [2025] EWHC 2429 (TCC) concerned Kronospan Limited's operation of its factory located in Chirk, a small town to the south of Wrexham. The Claimants' (a test group of residents of Chirk) claim was that the factory had emitted dust, noise and odour to such an extent that it constituted a legal nuisance.

Importantly, the claim did not concern any allegations of personal injury as a result of the emissions from the factory.

Kronospan's defence was that the impact of its factory was below the level of intensity or continuity that would be necessary for the emissions to be a legal nuisance. Kronospan added that its factory operations: (1) formed part of the existing pattern of uses in the locality; (2) had been tightly regulated to mitigate any environmental impact; and (3) constituted an ordinary and reasonable user of the site. Finally, and as an alternative argument, Kronospan sought to rely on the defence of prescription. Kronospan asserted that because the Claimants had tolerated the emissions for a long period of time without objection, they should now be prevented from bringing a claim in relation to those emissions.

This case highlights practical evidential issues surrounding nuisance claims and the importance of expert evidence in determining whether an interference with the use of the land has been made.

Decision

Ultimately, after the dust had settled, the Court dismissed the claims for nuisance. The Court decided that the dust did not amount to a nuisance, stating that "the claims made by each of the lead Claimants fail. They fail because, on my assessment of the evidence, I do not accept that the nature, extent, impact and frequency of the dust emissions suffered by them was sufficient to constitute a substantial interference with the enjoyment of their properties."

In making its decision the Court referred to one of the leading cases on nuisance, Fearn & Ors v Board of Trustees of the Tate Gallery [2023] UKSC 4 and highlighted that the Claimants must suffer a diminution in the utility and amenity value of their land in order to succeed. The Claimants had not established the necessary diminution and personal discomfort alone was not sufficient.

Concerning Kronospan's second defence, the Court was satisfied that Kronospan was appropriately regulated (and complied with those regulations). However, it did comment that compliance alone should be taken as the minimum standard to meet in industrial nuisance cases.

The importance of expert evidence

The decision is lengthy (running to over 1,000 paragraphs) and provides a helpful summary of the key facts to establish for a nuisance claim to succeed. The Defendant's use of its land must amount to a substantial interference with the Claimant's ordinary use of its land. This is assessed objectively and, as in Kronospan, will usually require expert evidence.

While not the sole reason that the Claimants were unsuccessful, the Court strongly criticised the Claimants' expert's evidence and emphasised the need for experts to maintain the essential principle of independence.

One point of criticism concerned the decision of the Claimants' experts to change their methodology (including by adjusting the input data from what had previously been agreed between the parties'

experts). The Court expressed its concern that "one reason for the change of approach was that the initial results were producing conclusions which were unfavourable to the Claimants' case".

This highlights the need for experts to act independently. If an expert changes their approach, they must be able to explain why this was necessary.

In contrast, the Court noted that Kronospan's expert had "explained in great detail in his report the process which he and his team had undertaken." The data collected and analysed by Kronospan's expert was also more complete than that relied on by the Claimants' experts -having reviewed data collected over three years as compared to nine months. This impacted the weight the Court was willing to place on the Claimants' expert's evidence, which it found to be "too variable, unreliable and time-limited to enable me to draw any clear conclusions".

The significance of the locality principle

The Court considered whether Kronospan's activities exceeded the 'ordinary use' of the land in light of the area's character. Chirk is described as a mixed residential and industrial town, with a population of approximately 4,500 with three factories (including Kronospan's factory) operating in the area.

Whilst the operations of the Kronospan factory had expanded since it opened in 1971, the Court held that this should be considered against the timeframe in which the changes had occurred. A Claimant must identify individual developments or intense increases to activities within the relevant period, especially where they cover a large period of time as in the Kronospan case. "Gradual changes or modest developments" which are "compatible with the existing character of the locality" will not suffice, in the Court's view.

Key takeaways

The Kronospan decision serves as an important reminder of considerations a Claimant should make before pursuing a nuisance claim. It is important that they have sufficient evidence of the instances of nuisance and the appointed expert is independent and has the expertise and resources to produce a robust, and objective, report. These types of claims can be expensive and time consuming, meaning careful analysis and thorough preparation of a Claimant's case to improve their chances of success is particularly important.

Similar points apply for a Defendant defending a nuisance claim, but it is also important to note that a Defendant's compliance with the relevant planning and environmental requirements in connection with their operations on land should be considered as a minimum, especially where operating near to residential land.

This article does not constitute legal advice, and you should seek advice on the specific circumstances of your case. Please contact Matt Cordwent if you have any queries

About the author

Matt Cordwent

Matt is an Associate in Charles Russell Speechly LLP's Real Estate Disputes team and advises on a mix of commercial and residential property disputes.

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Mr Shaun Moss

Expert evidence specifically to Housing Disrepair, Housing Conditions, and Fire Safety and the enforcement of Tall Buildings. Providing expert evidence in Civil Litigation, specifically related to Housing Disrepair and Housing Condition disputes. Expertise covers the Landlord & Tenant Act 1985 Sections 9a, 9b, 10, and 11 (LTA 1985 S9a, S9b, S10 & S11), the Homes (Fitness for Human Habitation) Act 2018, and the Health and Safety Rating System (HHSRS).

Shaun Moss MCIEH is a member of the Chartered Institute of Environmental Health and the Expert Witness Institute. He is Managing Director of Surrey Property Licensing. Surrey Property Licensing provide high quality, expert advice and support on any issues you may have surrounding PRS regulation.

He has over 19 years experience working for local authorities, including over 10 years in private sector housing and enforcement.

His experience includes;

- Enforcement Actions
- Housing Disrepair or Housing Conditions
- HMO Compliance Inspections
- HHSRS Assessments
- Fire Risk Assessments
- Enforcement Action

Shaun has undertaken and achieved the Cardiff University Bond Solon (CUBS) Expert Witness Civil Certificate and on the National Register of University Certificated Expert Witnesses as well being members of the Chartered Institute of Environmental Health (MCIEH) and the Expert Witness Institute (EWI).

Shaun has gained a reputation for developing positive working relationships with local authorities, landlords, letting agents, housing associations, developers, tenants and other organisations including Citizens Advice and Trading Standards.

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Medico Legal work

I have undertaken medico legal work as an expert in the areas of hearing loss, tinnitus, sensitivity to sound and auditory processing disorders in both adults and children since 2003.

Areas covered include liability, causation, condition and prognosis and quantum. I also advise on Auditory rehabilitation including conventional hearing aids, bone conduction hearing aids and cochlear implants, various auditory training and counselling strategies. I work closely with case managers to provide management in these areas, including for cases with traumatic brain injury.

The majority of my work (approximately 95%) is for the claimant in the case. I undertake approximately 30 cases per year, of which approximately 20 are Medical Negligence cases. I currently accept referrals from all over the UK, including for desktop reports based on records only.

Areas of expertise include;

- Diagnostic Hearing Assessments
- Medicolegal Audiometry
- Paediatric Audiology
- Auditory Processing Disorders
- Ear Wax Removal
- Audiological Management and rehabilitation
- Hearing Aids
- Cochlear implants
- Bone conduction hearing devices
- Hearing Protection
- Tinnitus Assessment / Management
- Sound Sensitivity Assessment / Management

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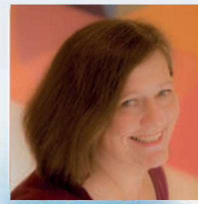

Dr Ruth Mason

Consultant Obstetrician

MD, FRCOG

Ruth started preparing medico-legal reports for PMS in 2016 and has prepared over 150 reports on clinical negligence in Obstetrics, as well as giving evidence in court on 12 occasions. She currently prepares 40 reports per year, including coroner's inquests and fitness to practice cases

- Consultant Obstetrician at University Hospitals, Sussex since 2010, becoming Labour Ward Lead.
- Special expertise in Obstetrics and Feto-Maternal medicine, including ultrasound scanning of the fetus.
- Expert witness for HM Coroner in Surrey on a series of Neonatal deaths, giving evidence in court.
- Reviewed all the maternity protocols to obtain CNST Level 3 in 2013. The maternity unit was designated "outstanding" by the CQC in 2016.
- Her main interests are in complex pregnancies, including twins, and the management of labour. Antenatal clinic for mums with mental health illnesses.

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Dr Ian Starke

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Dr Starke practiced as a Consultant Physician in Stroke Medicine, Geriatric Medicine and General Medicine at University Hospital Lewisham and Guy's King's and St Thomas' School of Medicine from 1988

He provides expert reports for clinical negligence cases in stroke medicine and geriatric medicine.

He provides expert clinical assessments as required both within and outside London, including virtual assessments where appropriate.

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Lithium battery fires - the next insurance wildfire

by Shiza Mukhtar, Paralegal at DAC Beachcroft.

Overview

It takes just one moment - a spark, a crushed casing, a dropped device - for an ordinary household object to become the start of a devastating fire. A recent home-security video that circulated widely across social media captured the moment a pet chewing a portable power bank triggered an explosive flash, filling the room with smoke in seconds. No malice, no negligence, just a split-second interaction with a lithium-ion battery.

It is a powerful demonstration of how commonplace, unpredictable, and fast-escalating lithium battery fires have become. From e-bikes and scooters to power banks, laptops, vapes, tools and energy-storage units, lithium-powered devices now sit in almost every UK home and business. As usage soars, so do fire losses, and insurers are increasingly facing claims that are complex, high-value, and difficult to recover. According to recent data obtained by QBE Insurance, UK fire services attended approximately 1,330 lithium-ion battery fires in 2024, almost double the 690 incidents recorded in 2022. E-bikes alone accounted for almost a third (27%) of all recorded lithium-battery fires in 2024, illustrating how everyday consumer products are now driving high-severity losses. This rapid escalation underlines how ordinary consumer devices are now driving a new class of high-severity household fire losses.

This article explores why lithium battery fires are rising, the challenges they present for insurers, and how early, informed response can protect both indemnity spend and recovery prospects.

A growing source of high-severity losses

Lithium battery fires are not ordinary fires. They behave differently, escalate rapidly, and often ignite without warning. When damaged, over-charged or poorly manufactured, the battery can enter "thermal runaway"; a chain reaction that causes intense heat, gas release, and explosion-like behaviour.

For insurers, this trend translates into a growing pattern of high-severity property damage, with lithium-battery fires spreading so fast that entire rooms are engulfed before occupants realise something is wrong. Causation investigations also become significantly more challenging; once a battery enters thermal runaway, it often destroys itself and any surrounding evidence within seconds, leaving insurers, loss adjusters, and experts with very limited material to analyse and making it harder to determine liability, identify recovery prospects, or rule out third-party contribution. At the same time, reinstatement periods are lengthening, leading to more substantial living-expense and business-interruption claims as properties require extensive smoke decontamination, structural repair, and specialist remediation. Importantly, these incidents are no longer confined to industrial or specialist settings - residential losses now account for a rising share of lithium-related claims, particularly those linked to e-bike chargers, portable power banks, and vapes left unattended or incorrectly stored, expanding the risk landscape that insurers must navigate.

Why these claims are harder to investigate

From an insurance perspective, lithium battery fires present unique evidential challenges.

1. Evidence is often destroyed at ignition

Traditional fire origins such as faulty wiring, cooking equipment or candles typically leave clear and recognisable burn patterns, whereas lithium battery failures can destroy the point of origin entirely, making it significantly harder for investigators to identify whether the fault lay with the manufacturer, the charger, or the way the product was installed or used.

2. The supply chain is complex

Batteries are often imported, assembled from parts sourced globally, repackaged by different brands, or

sold through online marketplaces. Determining the appropriate point of liability, whether that lies with the manufacturer, importer, retailer, or assembler, becomes a complex and often uncertain exercise.

3. Unregulated or non-compliant products

A substantial proportion of e-bike batteries and chargers sold online fail to meet UK safety standards, with many being defective, incorrectly labelled or altered by third-party repair shops, which in turn makes recovery efforts significantly more difficult for insurers.

4. Multiple potential defendants

Claims can quickly become multi-party disputes, potentially involving the battery manufacturer, the charger supplier, the device or e-bike brand, the retailer, the repair technician, or even landlords and tenants where charging took place in communal areas. Early legal review is therefore essential to identify viable recovery targets before evidence is lost or parties become unreachable.

Policy wording: coverage questions are increasing

Insurers are also seeing a rise in policy-wording questions as lithium battery incidents become more common, particularly around whether modified, repaired or third-party batteries fall within cover, whether overnight or improper charging amounts to misuse, and whether endorsements impose specific duties for e-bikes, scooters or battery-storage units. Issues can also arise when fires appear sudden and accidental, but stem from a gradual fault within the battery or its components. These uncertainties mean coverage positions can become contentious, so early reservation of rights and prompt, well-instructed expert evidence remain essential tools for insurers navigating this evolving risk.

Recovery: a critical opportunity if action is taken quickly

Recovery remains a critical opportunity for insurers, but only when action is taken quickly.

1. Early evidence preservation

Although lithium battery fires can destroy the battery itself and much of the surrounding evidence, early steps significantly improve subrogation prospects. Prompt site attendance and preservation of any remaining debris can make the difference between identifying a manufacturing defect and losing the chance entirely.

2. Joint expert instruction

Early joint expert instruction with potential defendants also streamlines the investigation, avoids duplicated examinations, and strengthens any future recovery action.

3. Supply-chain tracing

DACB's recent experience demonstrates that prompt supply chain tracing, including for online purchases, frequently uncovers recoverable targets, especially where CE or UKCA compliance has been presented inaccurately.

4. Consumer-protection legislation

Even where evidence is partially compromised, consumer-protection legislation such as the Consumer Protection Act 1987 provides insurers with powerful strict-liability routes against manufacturers, importers, or distributors.

Despite the challenges, lithium battery fires often present real recovery potential for insurers. But speed is crucial.

What insurers can do now

With lithium battery fire claims increasing each year, insurers can strengthen their response by setting clear underwriting guidance for high-risk items such as e-bikes, scooters and battery storage units; providing policyholders with accessible information on safe charging and storage; implementing defined procedures for early site attendance that include asking about battery-powered devices at first notification of loss; establishing expert panels with proven experience in lithium battery causation and supply-chain analysis; and working closely with legal teams so that evidence is preserved promptly and recovery prospects are assessed at the earliest possible stage.

Conclusion

Lithium battery fires are no longer rare anomalies; they are now a mainstream source of significant loss for UK insurers. The viral video of a dog accidentally igniting a battery power bank is a reminder of just how easily these incidents can occur in ordinary homes. For insurers, the challenge is twofold: navigating increasingly complex questions around coverage and causation and acting quickly enough to secure evidence that may support a recovery. As these claims continue to rise in both volume and complexity, early engagement, structured investigation, and clear legal strategy will be essential to managing indemnity spend and maintaining policyholder safety.

Ms Sarah Bagnall

Materials Engineer Specialising
in Materials Failure Analysis

First-class degree in Forensic Engineering and a Master's in Steel Technology

Ms Sarah Bagnall is a Materials engineer specialising in materials failure analysis particularly for the petrochemical, process and power generation industries. She is currently the Director of the Consultancy Services at R-TECH Materials, based in Port Talbot, South Wales.

Sarah has broad experience with a wide range of engineering components, metallic and non-metallic materials, and industries. She has conducted over 700 failure investigations covering both metals and polymer and composite materials. Sarah also has specialist expertise in the thermal degradation of austenitic steels.

In addition to failure analysis, her role also includes product development support, liability concerns and general material quality issues. Sarah has experience in a wide range of metallic materials including carbon and stainless steels, copper-based alloys, nickel-based alloys, titanium, aluminium, and tantalum. Sarah also has experience in polymer and composite materials and recently acted as an expert witness for the failure investigation of GRP water tank panels.

Sarah has experience and expertise in undertaking expert witness cases, holding the Cardiff University Bond Solon Expert Witness Civil Certificate (2022) and serves as the Chair of the Wales & South West England branch for the Institute of Corrosion. She also sits on the board of the British Stainless Steel Association. She has published papers in 2014 and 2017.

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Mr. Glenn Horton

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A significant portion of my workload is comprised of numerous cases involving the use of combustible materials in the build-up of external walls, alongside other alleged fire safety deficiencies. My instructions generally involve compliance with guidance, regulations and contracts, organising fire tests for systems and materials.

I specialise in the application of Part B of Building Regulations, the Regulatory Reform (Fire Safety) Order 2005& the design and installation of fire fighting systems in England and Wales. Taking instruction in relation to the cause, origin and spread of fire and have worked on a number of significant matters in this field.

I have extensive experience including the preparation of reports under CPR for Civil and Criminal cases and an extensive CV of cases and formal instructions, as well as attendance at court, adjudications and mediations

I have worked throughout the UK (including the Channel Isles & Scotland), Asia, Europe and Africa. Specialising in working with clients who have fire safety issues, whether they be civil or criminal matters.

Recent cases include: Provision of expert support arising out of construction defects, exposing our client to potential prosecution due to alleged non-compliant external wall build-up; expert reports following post-fire prosecution; application to have a formal notice withdrawn, contractual disputes between landlords and tenants.

I have been involved in fire safety since 1981, initially as fire officer, then subsequently as a fire consultant and engineer.

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Andrew has many years experience of compiling reports for litigious cases, several of which have necessitated a subsequent court appearance as an expert witness to argue quantum. Divorce valuations are a speciality, usually as Single Joint Expert. He is an Associate Member of Resolution. Work is carried out throughout the UK and abroad.

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Fibromyalgia in the courtroom – a fresh approach?

by Charles Heppenstall, Partner at Weightmans.

The complexities of fibromyalgia, a condition marked by widespread pain and subjective symptoms.

The Royal College of Physicians defines fibromyalgia (hereafter "FM") as "a condition characterised by persistent and widespread pain that is associated with fatigue, sleep disturbance, impaired cognitive and physical function and psychological distress." However, the truth is there is no widely accepted definition of FM. Usually in cases where the diagnosis is given claimants complain of debilitating symptoms limiting most aspects of life, and in extreme cases can leaving claimants virtually bedridden. It follows, therefore, that where personal injury compensation is an option, claims for long term pain–related loss of earnings, care and treatment are common. The difficulty faced by defendants when dealing with such claims is that symptoms are almost entirely subjective on account of the stark absence of clear objective biomarkers or definitive diagnostic testing. This in turn creates a fertile environment for causation disputes and credibility challenges.

As a "diagnosis of exclusion", FM is widely contentious within the medical profession, with some clinicians arguing that it is not an actual "disease" but an "illness construct", a label used to explain reported chronic pain without organic cause. The subjective nature of the condition can lead claimants to "catastrophise" what objectively would be seen as manageable "general aches, pains and misery" , and so the psychological dimension is very much front and centre.

Dr Fred Wolfe, rheumatologist and leading authority on clinical FM, makes a case that the condition would be better understood as "polysymptomatic distress", in the presence of diffuse somatic symptoms and an often disproportionate emotional response, but however general the label it does describe a recognised condition. In genuine cases it is how and when this label is used, and the perception it creates for both the patient and the clinician, that is of concern for defendants.

At a recent seminar at Weightmans's London office expert psychiatrist Dr Christopher Bass, whose 2024 Journal of Personal Injury Law paper "Fibromyalgia in the Courtroom" presented the findings of a ten year clinical study into the condition, argued that the diagnosis can indeed be damaging, potentially turning an individual with treatable physical and/or psychological distress into to a long-term patient. It is this iatrogenic effect of misdiagnosis, caused unintentionally by medical treatment, that mis-serves both the claimant and (as paying party) the defendant.

Therefore, Dr Bass advocates against FM as a diagnosis in a medico-legal context on the grounds of:

I. the absence of a causal link between physical injury and the development of FM;
II. the prevalence of pre-existing pain and functional issues in the vast majority of FM claimants; and
III. the potential in medico-legal cases of claimants "buying into" the diagnosis.

Broadly, this reflects the present approach by the judiciary: accepting FM as a label for reported diffuse and disabling pain without organic cause, whilst being reluctant to fully accept FM as a formal diagnosis in the absence of a defining test.

Dr Bass is in favour of "demedicalising" FM claimants by avoiding formal diagnostic titles and using instead more general terms such as "disproportionate pain and disability." This would prevent claimants adopting invalid roles and becoming victims of their own emotional states, empowering them to

recover, and assisting medics when recommending treatment and therapies. From a clinical perspective, on this last issue Dr Bass points out that "illness beliefs, expectations, and perceived injustice are key determinants of chronicity but rarely measured or taught in med school or to psychiatrists in training."

Practical implications

In the current medicolegal climate defendant practitioners are to a large degree reliant on claimants' accounts of their symptoms and disabilities, but a well-planned strategy, to include interpretation by the right medical experts and an early forensic investigation, can limit if not avoid entirely some of the largest claims. As noted above, the lack of any identifiable physical injury leaves these cases susceptible to claimant exaggeration (either conscious or unconscious) and fraud. Where fundamental dishonesty is suspected an early conference with the legal team is recommended to make a decision made on what evidence in support is required and ensure that decisive and proportionate action is taken (note: the burden of proving fundamental dishonesty rests with the defendant).

Therefore, best practice in FM cases should include the following:

1. Claims involving pre existing FM

- Build a clear pre accident profile of symptoms and function.
- Distinguish between temporary flare-up and long-term aggravation.
- Use medical records to demonstrate natural fluctuation.
- Challenge any suggestion of permanent worsening unless trauma was significant.
- History of other functional disorders supports argument that post-accident symptoms have similar cause.

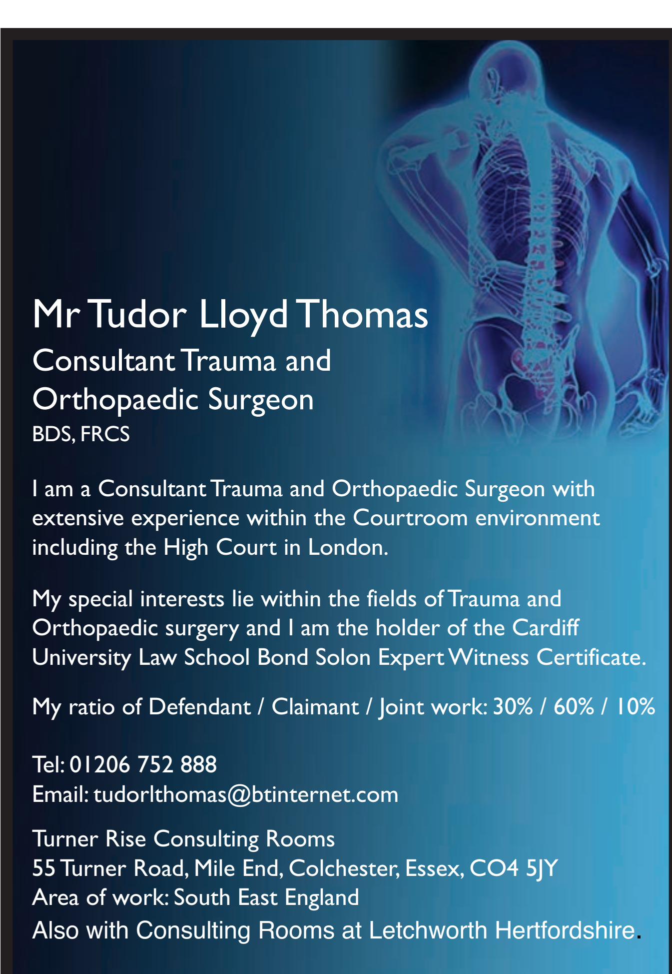
2. Claims involving post-accident FM

- Question biomechanical plausibility for low-speed impacts.
- Scrutinise timing of symptom development; the later the onset the less likely there is a causal link.
- Review psychosocial stressors and alternative causes.
- Ensure experts address whether trauma could realistically "trigger" the condition.

3. For all FM-related claims

- Thorough forensic examination of post and pre-accident records, to include medical, primary care, welfare, DWP and employment / occupational health records.
- Consider functional inconsistency through surveillance or social media.
- Instruct own experts with chronic pain expertise.
- Build chronology charts mapping symptoms to evidence.
- Challenge opponent expert assumptions not grounded in objective documentation.

First published by Charles Heppenstall, partner at law firm, **Weightmans.**



Pleadings and conflicts of interest

by Richard Whitehouse, Barrister at 3PB Barristers.

Blower v GH Canfield LLP
[2025] EWCA Civ 1627

Introduction

This recent Court of Appeal decision primarily deals with issues around pleading breach and causation in the context of a professional negligence claim. The claim arises from settlement advice that was provided by solicitors, allegedly in a situation where there were conflicts of interest.

The Court found that there was not a conflict of interest, partly because this had been pleaded narrowly, and there was no coherent case on causation.

Background

Mr Blower had been adjudged bankrupt in May 2014, following which his trustee in bankruptcy initiated proceedings against him and his family.

The claims brought by the trustee in bankruptcy included actions relating to an unsanctioned post-petition disposition of the bankrupt's property and various transactions at an undervalue. The claims had a total value in excess of £2 million.

GH Canfield LLP ("Canfield") acted for Mr Blower and his family.

In August 2015, a conference was held with Counsel during which Mr Blower gave instructions that a global settlement in relation to all of the matters relating to the Blower family should be agreed.

On 9 December 2015 a 12-hour mediation resulted in a global settlement whereby the family members agreed to pay the trustee in bankruptcy £1.5 million by 30 September 2016

On 15 December 2015 Mr Blower told Canfield that he no longer wished to be bound by the settlement agreement and took particular issue with the charges that had been agreed to be placed over various properties as security.

The sum of £1.5 million was not paid to the trustee in bankruptcy on 30 September 2016. As a result, Mrs Blower stated that she was forced to sell a villa in Spain in order to raise money to go towards paying the £1.5 million.

Mrs Blower later alleged that Canfield had acted negligently in the conduct of the mediation and in advising settlement, and that this caused loss to her and her daughter. Mrs Blower alleged that, if Canfield had properly advised her, she would not have agreed to the settlement that was reached. She also alleged that there was a conflict of interest in Canfield acting for Mr Blower and other family members, specifically because she had claims against Mr Blower and the bankrupt estate. It was alleged that Mrs Blower's claim had a value of about £5 million.

At first instance, His Honour Judge Paul Matthews KC (sitting as a High Court judge) dismissed Mrs Blower's claim on the basis that Canfield had not been negligent, and even if negligence had been established, there was no coherently pleaded case on causation. The judge was not invited to consider a claim for damages on a loss of a chance basis.

Mrs Blower was granted permission to appeal on two principal grounds:

(1) whether Canfield had acted under a conflict of interest in advising different family members including her bankrupt husband, and

(2) whether the pleadings sufficiently articulated causation.

3PB analysis

Conflict of Interest

The Court of Appeal was invited to consider whether there was a conflict of interest in Canfield representing multiple clients with potentially divergent interests. It was reiterated that the trial judge had considered the conflict in the terms in which it had been pleaded and advanced at trial. The Court of Appeal was not persuaded that the judge had erred in his assessment. The pleadings on conflict were narrower than the arguments advanced on appeal, and there was no basis for concluding that the judge misapplied legal principles on conflicts.

The judge's unchallenged findings of fact that were relevant to this point were that the family trusted Mr Blower to negotiate the best deal, that neither Mrs Blower nor her daughter would have refused the settlement he negotiated, and that a reasonably competent litigation solicitor would have advised settlement on similar terms. As a result of these findings, even if there was a conflict of interest, it would not have made any difference to the outcome.

While acknowledging that solicitors must comply with the SRA Code of Conduct and should not act where conflicts arise, save in limited circumstances, the Court held that, given the narrow pleading and the family dynamics found by the judge, a conflict would have made no difference overall.

Causation and Pleading Requirements

The second core issue was whether the pleadings sufficiently articulated causation. The Court of Appeal endorsed the trial judge's finding that Mrs Blower had not set out a coherent case on causation, in that she had not particularised what would have happened if she had not entered into the settlement agreement on 9 December 2015. There were no pleadings as to whether Mrs Blower contended that she would have settled on more favourable terms and what those terms would have been, or whether she would have defended the claims at trial and what the outcome would have been.

The Court of Appeal noted that the judge had already afforded latitude by going beyond the strict pleadings, and that it would have been inappropriate to entertain a loss of chance argument on appeal where it had not been properly pleaded or pursued at trial. The key finding in terms of causation was that there were no circumstances in which Mrs Blower would have defied Mr Blower and refused to agree to the terms that he had negotiated. On that basis, the end result would have always been the same. The relevant findings of fact, together with the inadequate pleadings, made it impossible for the appeal to succeed.

Impact of the decision

This decision is a useful reminder that pleadings can be critical to the success of a claim, both in terms of breach and causation. It is insufficient to advance broad assertions that a client "would not have agreed a settlement" without articulating the specific counterfactual scenario and how that would have resulted in the claimant being in a better financial position.

Proper consideration always needs to be given to whether the claim is for the loss of a chance of obtaining a better outcome. Where the outcome is dependent on the hypothetical actions of third parties, the loss will usually be assessed on a loss of a chance basis, but it is vital that such pleadings are included in the claim. In this case, if it had been pleaded that Mrs Blower would have obtained a better settlement, had she been properly advised, the outcome was dependent on what Mr Blower and the trustee in bankruptcy would have agreed to, so that would have been a loss of a chance claim.

Conflicts of interest are often raised as the basis for professional negligence claims, but it is important to consider what the parties' interests were at the relevant times and whether they actually conflicted. Theoretical conflicts are often manufactured retrospectively, which are not supported by the contemporaneous documents. The evidence in this case highlighted that Mr and Mrs Blower had broadly the same interest, which was to pay as little as possible to the trustee in bankruptcy.

Professional indemnity insurers and solicitors facing negligence claims will no doubt be pleased that the Courts continue to take a strict approach to pleadings, and it seems likely that this case will be raised as a warning to claimants with speculative or vague claims.

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BSc (Hons), BSc (Dist), DC, MPhil, FRCC

Mr Martin Young is a practicing chiropractor with over 25 years' clinical experience, currently based in clinics in South Somerset & North Dorset with five associates and over 14,000 active patients. He also work in a specialist Headache Clinic, co-managing head and face pain patients as part of a multi-disciplinary team.

In addition his my clinical practice, Mr Young work as an chiropractic expert witness specialising in Chiropractic negligence and malpractice cases. He has already received over 550 instructions in this regard from Claimant and Defendant in roughly equal measure and he's experienced in giving oral evidence in courts and tribunals. Offering independent professional opinions in matters of:

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- Personal injury
- Road traffic accidents
- Low back pain
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- Repetitive strain injuries

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Mr Gerard Cronin

Nursing Care Expert

BSc (Hons), Nursing MA (Healthcare), Diploma in Nursing & Registered Nurse

I am a Registered Nurse and Medico Legal Expert with 25 years of full-time NHS experience.

I have worked as a medico legal expert since 2008. I have been fully trained in all aspects of the medico legal process including giving evidence in Court. I am fully conversant with CPR rules and directions. I have given evidence both in the Crown Court in England and to the Fatal Accident and Sudden Death Inquiry Court in Scotland.

On average, I prepare 100 Medico Legal reports each year. My Defendant/ Claimant split currently stands at 30/70.

My areas of clinical expertise include:
General Nursing care A&E/Emergency Care
Acute Assessment Unit Acute Medical Wards
My company retains several Nursing and Midwifery Associates.

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General Nursing	Respiratory Nursing
Intra Venous therapy nursing	A&E Nursing
Tissue Viability Nursing	Prison Nursing
Mental Health Nursing	Learning Disability Nursing

All of my Associates have been trained to produce CPR Part 35 compliant expert reports and have been trained in the provision of oral evidence to the Court.

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Dr Linda Monaci

Consultant Clinical Neuropsychologist

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- Stroke
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- Mental capacity assessments
- Post-concussion syndrome
- Anoxia
- Dementia
- Neuropsychiatric conditions
- Alcohol and drug abuse

Medico-legal services: Instructions from Claimants, Defendants and as a Single Joint Expert. Assessments can also be carried out in Italian. Dr Monaci has a good knowledge of Swedish and Spanish and has experience of working through interpreters.

Dr Monaci has completed the Cardiff University Bond Solon Expert Witness Certificates.

Dr Monaci receives approximately 60-70% instructions from Claimants and 40-30% from Defendants. In April 2024, Dr Monaci counted each new instruction received in the previous 12 months and found the percentages were as follows: 58% Claimant, 37% Defendant and 5% Jointly instructed. In April 2025, Dr Monaci calculated that in the previous 12 months, the split was divided as follows: 73% Claimants, 24% Defendants and 3% jointly instructed.

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The Sentencing Act 2026: New Sentencing Provisions

by Michelle Kafe, Pupil at Guildhall Chambers.

by Nick Payne & Nina O'Sullivan, Lawyers at Mishcon de Reya.

The Sentencing Act 2026 ('the Act'), which received Royal Assent on 22 January, is likely to have a significant impact on the way in which the courts deal with offenders. The Act follows a period of consultation which highlighted the chronic challenges facing the criminal justice and prison system. At the heart of the new Act is an aspiration to rehabilitate low-level offenders in the community, rather than through the prison system. This includes more stringent community order requirements to ensure that punitive aspects of the justice system remain intact.

Presumption of Suspended Sentence

Section 1 of the 2026 Act introduces the presumption of a suspended sentence order, where the sentence ordered is one of 12 months or less. Under subsection (2), where the offender is between 18 and 21 years of age and is sentenced to a young offender institution,

(2) The court must make a suspended sentence order in relation to the sentence where this section applies unless the court is of the opinion that there are exceptional circumstances which—

(a) relate to the offence (or the combination of the offence and one or more offences associated with it) or the offender, and

(b) justify not making the order.

Section 1(3) of the new legislation includes identical provisions for offenders over the age of 21 upon conviction and inserts the same caveat of 'exceptional circumstances' stated in s.1(2). An example of 'exceptional circumstances' includes where the offender has breached a court order.

The provisions under section 1 only apply if the offender is not already in custody either serving a custodial sentence or remanded for other matters. Pre-sentence report requirements will still apply.

It is important to note that this provision will only apply if the defendant is convicted (not sentenced) on or after 22 March 2026, which is when these sections of the Act come into force.

Length of Suspended Sentence

The change which is likely to have the most impact in the Crown Court is the increase in the maximum term over which a custodial sentence can be suspended from 2 years to 3 years. This is stipulated in section 2 of the Act. This provision will similarly only apply where the offender is convicted on or after the 22 March 2026.

Bail

Section 44 of the 2026 Act will amend the Bail Act 1976 to include the imposition of electronic monitoring requirements upon release on bail. The previous presumption in favour of bail where there was no real prospect of the defendant receiving a custodial sentence has been extended to include circumstances where there is no real prospect of the defendant receiving a suspended sentence.

Deferring a Sentence

Section 5 of the Act increases the duration over which a sentence can be deferred from 6 to 12 months. This aims to address the fact that a longer period of 'testing' may provide greater clarity into the offender's behaviour and rehabilitation prospects after being convicted of an offence.

Domestic Abuse

Section 6 of the Act introduces a requirement for a formal judicial finding of domestic abuse. Under s.6(2), the court must, in open court, state that in its view the offence involved domestic abuse carried out by the offender.

Under the existing Sentencing Guidelines, the domestic context is an aggravating feature of particular offences, and there is a distinct guideline on domestic abuse. Nevertheless, the new provision will go further to include a declaration from the court at sentence stating, in its view, the offence was committed in a domestic abuse context. This is applicable regardless of the offence charged. The aim of this provision is to ensure that domestic abuse is clearly identified and tracked by the courts.

Court Transcripts

Section 22 of the Act requires the court to supply transcripts of the sentencing remarks, upon request, to the victim of the offence. Under s.22(2):

The Secretary of State must supply the transcript to V, or arrange for the transcript to be supplied to V—

(a) free of charge, and

(b) before the end of the period specified in regulations made by the Secretary of State.

This is something which ought to be mentioned to victims prior to sentence, especially when the victim has engaged in proceedings and is interested to know the outcome but does not wish to see the defendant in court.

Probation Requirements

Several provisions have been included in the new Act to amend and extend the requirements a court can impose when an offender receives a sentence other than immediate custody. The current prohibited activity requirements in Scheule 19 of the Sentencing Act 2020 have been expanded to include specific driving, drinking and public event attendance prohibition requirements (sections 14 to 17).

Section 14 of the 2026 Act stipulates that the court may impose a driving prohibition requirement – an order restricting when and where a person can drive – even where the relevant offence did not involve driving or the use of a motor vehicle.

A restriction zone requirement (Section 17) requires an offender to remain, for a particular period, in one or more particular areas. The order must be specified by the courts. This requirement can endure for up to 2 years.

Under section 13 of the Act, Rehabilitation Activity Requirements (RAR days) are renamed probation requirements and substituted as such in the relevant sections of the Sentencing Code.

Conclusion

The Sentencing Act 2026 appears to herald a concerted shift from short periods in prison to a wider and longer range of sentences that can be served in the community. This is underlined by the presumption in favour of short suspended sentences and the increase in their duration. Although the focus on community based penalties may attract headlines, there are other provisions which provide some encouragement for victims, especially in cases involving domestic abuse.

This artcle was first writtem by Michelle Kafe, pupil for the Crime Team at Guildhall Chambers, Bristol.

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Expertise covers:
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Soft tissue rheumatism: shoulder; tendinitis; carpal tunnel syndrome; wrist/hand pain; tenosynovitis/de Quervain's

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- neuropsychological functioning (behavioural and functional implications rather than brain-based pathology),
- behavioural risk assessment (violence and sexualised behaviour),
- vulnerability in custodial settings (suggestibility),
- complex formulation.

Paul's expert witness practice is informed by more than 25 years of applied experience across HM Prison & Probation Service, the NHS, independent forensic practice, and trauma-exposed professional domains, including digital forensics and drug & alcohol rehabilitation. His evaluations draw on structured clinical interviewing, psychometric testing, behavioural and procedural evidence review, analysis of medical and legal records, and, where relevant, CCTV and body-worn video review, within ICD-11 and DSM-5 diagnostic and formulation frameworks.

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Mr Moore has particular expertise in the following areas:

- Urogynaecology/Female Urology.
- Complications arising from the use of mesh in the vagina e.g. TVT/TOT.
- Complications arising from gynaecological surgery e.g. vaginal fistula, ureteric injury.
- Cauda Equina Syndrome.
- Head injury, Spinal cord injury.
- Bladder overdistension injury.
- Urological consequences of pelvic fracture.
- Urinary tract infection.
- Bladder/Pelvic pain conditions.
- Genitourinary trauma.

Mr Moore has been involved in medicolegal practice for over a decade and is on the GMC's panel of expert witnesses and provides opinion for fitness to practice investigations. He is both an accredited expert for AVMA and holds Cardiff University Expert Witness Accreditation. Mr Moore is also currently undertaking a Master's degree in Medical Law and Ethics (LLM)..

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Clinical negligence expert (60% plaintiff, 40% defendant).

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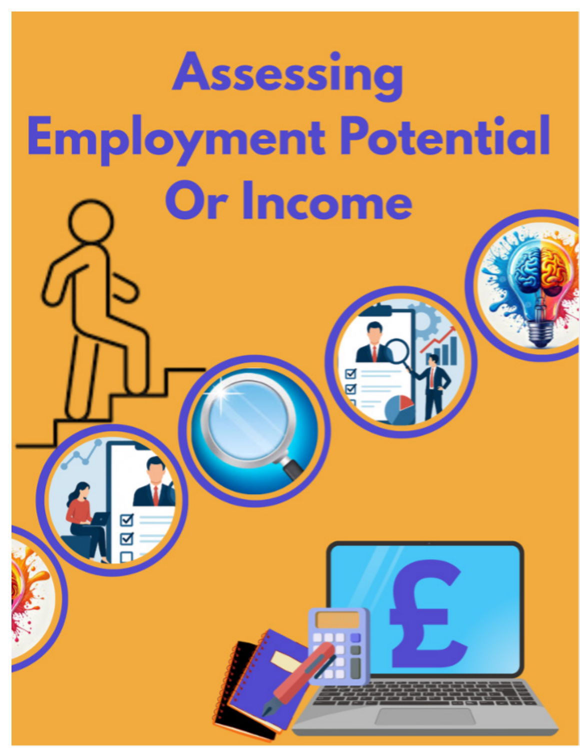
The Architecture Of Employabilty: How Vocational Experts Guide Courts And Tribunals Through Complexity

by Maria Morris, Vocational Rehabilitation Specialist & Expert Witness at Circle Case Management.



The Quiet Expert Behind the Most Accurate Legal Decisions

Across the UK legal landscape, one truth is becoming increasingly clear: the courts cannot deliver fair, evidence-based outcomes without a deep understanding of work potential or capability, employability, and earning capacity.

Yet the labour market is now more complex than at any point in modern history. Hybrid work, automation, use of Ai, skills shortages, neurodivergence, long-term health conditions, and shifting employer expectations have transformed what it means to be "employable."

Judges, barristers, solicitors and Tribunal panels are experts in law — not in labour market dynamics, occupational health, occupational psychology, functional capacity, or vocational rehabilitation or vocational prognosis.

This is where the vocational expert steps in.

A vocational expert is not simply an assessor of jobs. They are an experienced vocational translator - converting medical, clinical and occupational evidence, personal history, functional limitations, and labour market plus employment realities into clear, objective, court ready conclusions about what a person can do, could do, and is likely to earn.

In personal injury, family law, employment law, and tribunal litigation, vocational evidence has become the hidden architecture supporting fair, defensible decisions.

This article explores:

- What vocational experts actually do as part of their assessment.
- Why their evidence is increasingly indispensable
- How vocational analysis supports courts across multiple legal domains
- The risks when vocational evidence is not used
- Examples of how vocational reasoning has influenced UK court decisions
- The future of vocational evidence in a rapidly changing labour market

1. What a Vocational Expert Actually Does — And Why It Matters

Many legal professionals have worked with medical experts, forensic accountants, nurses, psychologists or occupational therapists. But vocational experts occupy a unique space: the intersection between health, work, and law.

A high quality vocational assessment written by an experienced expert typically includes:

1.1 Vocational History & Transferable Skills Analysis

A vocational expert examines:

- Work history
- Skills and competencies
- Training and qualifications
- Career trajectory
- Barriers to work or career progression
- Transferable skills
- Likely future career path (with and without injury, divorce or incident event)

This is not just a CV review. It is a detailed analysis and reconstruction of a person's vocational identity and their employment potential.

1.2 Functional Capacity and Work Ability

Vocational experts integrate:

- Medical, clinical or occupational evidence
- Functional limitations
- Cognitive and psychological factors
- Pain, fatigue, stamina, and pacing
- Executive functioning
- Sensory sensitivities
- Workplace adjustment needs

This is especially critical in cases involving:

- Chronic pain
- PTSD
- Autism
- ADHD
- Long Covid
- Functional neurological disorders
- Brain injury
- Stress related illness
- Complex injuries or health conditions

Medical experts may describe impairment. Occupational Therapists may discuss functional limits on daily living. Vocational experts describe impact on work, employment and income.

1.3 Labour Market Mapping

This is where vocational evidence is uniquely powerful.

A vocational expert analyses:

- Realistic job options
- Availability of suitable roles
- Salary ranges
- Regional labour market conditions
- Likely employer expectations
- Recruitment trends
- Hybrid or remote work opportunities
- Barriers to entry
- Time required to retrain or resume work

This is not mere speculation – it is based on assessment, research, experience and evidence.

1.4 Residual Earning Capacity

Courts and Tribunals need to know:

- What could this person earn now?
- What could they earn with any retraining?
- What is the likely trajectory over 5, 10, 20 years?
- What is the difference between pre and post injury, divorce or incident earnings?

Vocational experts quantify this with clarity and objectivity.

1.5 Expert Witness Reporting and Testimony

A vocational expert provides:

- CPR compliant reports
- Joint statements
- Clear, impartial conclusions
- Responds to specific questions to provide the missing information about work.
- Courtroom testimony
- Assistance with cross examination
- Integration with medical, clinical, financial or other evidence

Vocational evidence is not advocacy.

It is analysis, grounded in evidence and professional methodology.

2. Why Vocational Experts Are Critical in Personal Injury Litigation

In personal injury cases, the court must determine:

- Loss of earnings
- Loss of future earnings
- Loss of earning capacity
- Feasibility of returning to work
- Cost and time of retraining or resuming work in a pre-injury or post injury job or even into self-employment.
- Impact of disability and injury on employability

Medical evidence alone cannot answer these questions.

A surgeon may confirm that a claimant has a 20% reduction in grip strength in their dominant hand.

An Occupational Therapist may say they are now restricted to using mostly their non dominant hand for certain daily living tasks.

However, only a vocational expert can answer:

- Does this prevent them from returning to their job role or trade?
- What alternative roles are realistic?
- Are these roles available to them locally? Or do they need remote work?
- What adjustments or equipment might they require at work to overcome this barrier?
- What salary range is achievable?
- How long will retraining take?
- What is the long term vocational prognosis?

Without vocational evidence, courts and Tribunals are left to guess.

2.1 The Legal Principle: Courts Must Avoid Speculation

UK courts have repeatedly emphasised that decisions about earning capacity must be grounded in evidence, not assumption.

In A Local Authority v RS (Capacity) [2020] EWCOP 29, Reference (1) the court criticised assessments that relied on generic statements rather than detailed, functional analysis.
Although not specifically a vocational case, the principle is directly applicable:

Courts require robust, analytical, evidence driven assessments — not assumptions — when determining a person's functional abilities. Vocational experts provide exactly that.

2.2 How Vocational Evidence Influences Personal Injury Outcomes

Examples from practice include:

- Demonstrating that a manual worker with chronic pain cannot sustain full time work, even if they can perform tasks intermittently
- Showing that a claimant with PTSD cannot return to customer facing roles but can retrain into remote administrative work
- Establishing that a claimant with mild brain injury has reduced processing speed that limits progression into higher paid job roles
- Providing evidence that a claimant's pre injury career trajectory would likely have led to promotion and increased earnings

Here are some anonymised vocational expert client examples:

The 23 year old man with a brain injury who was struggling to study and gain qualifications which may or may not have resulted in him working as a Personal Trainer. Including the loss of income experienced by his Mother having to help support him with studies and work placements.

Or the middle aged man who was working as a bus driver with a chronic liver condition post infection leading to him being deemed unfit to resume work. He was deemed able to ad hoc voluntary work could be an option to help his wellbeing and provide some purpose and structure to his life. He had lost 2/3 of his pre incident salary.

Or the 16 year old boy who was due to start an apprenticeship within construction now dealing with partial sight. The impact this would have on his apprenticeship and need for adjustments at future work.

These insights directly influence quantum.

3. The Underestimated Power of Vocational Evidence in Family Law and Divorce

Family law is one of the fastest growing areas for vocational expert instruction.

Why? You may ask.

Because modern divorce cases increasingly involve disputes about:

- Earning capacity
- Ability to return to or continue to work
- Feasibility of retraining if work absence has been a significant period of time
- Impact of childcare or parental elder care responsibilities
- Hidden earning potential
- Underemployment
- Voluntary unemployment
- Career breaks
- Long term illness

Courts must determine:

- Should spousal maintenance be awarded?
- For how long?
- At what level?
- Is one party deliberately under earning?
- Is a return to work realistic?
- What income could be achieved with retraining or any work place adjustments?

These are all vocational questions which can be answered

Here's another example:

A couple divorcing after 12 years of marriage. The woman worked part time until one of the children was diagnosed with severe autism. She then gave up work to care for her son and daughter. The woman has ADHD herself (adult diagnosis) The man worked full time. He earned over £50,000 per annum. He has been made redundant recently and also just diagnosed with cancer.

Some of the questions answered within the vocational expert report were to assess and provide opinion on:

- Factor in the parental care needs for the children and impact this may have on both parents in terms of their capacity for future work.

- How do their health symptoms impact on any future work or earning capacity?
- What types of work roles in the future could either of them conduct given their skills or career experience?
- Are there any limiting challenges or factors for them resuming work such as health, geographical location or anything else?
- What support or adjustments at future work would they both require, if any.
- What has been the lost income from both parents during their marriage, comparing any previous roles with any future work roles?

3.1 Why Family Courts Need Vocational Experts

Family courts often rely on assumptions such as:

- "She can go back to work now the children are older."
- "He could earn more if he tried harder."
- "She has a degree so now she can get a professional job."
- "He used to earn £80,000 so he can do so again."

These assumptions can be wildly inaccurate.

Vocational experts provide:

- Evidence and experience based earning capacity
- Realistic retraining timelines
- Labour market analysis
- Functional capacity assessment
- Transferable Skills Analysis
- Insight into barriers such as age, health, or outdated job skills

This prevents unfair or unrealistic orders.

3.2 High Net Worth & Complex Cases

Vocational experts are increasingly used in cases involving:

- CEOs
- Directors
- Entrepreneurs
- High earning professionals
- Individuals with complex career paths

Vocational experts are regularly increasingly instructed in matrimonial disputes to assess remuneration and prospects of high level professionals.

This is particularly important where:

- One spouse alleges the other is hiding earning potential
- A party claims they cannot return to work
- A party who seeks long-term maintenance
- There is a dispute about lifestyle, standard of living, or future income

Vocational evidence brings added clarity.

4. Employment Law and Tribunal Cases: Vocational Evidence as a Decisive Factor

Employment tribunals frequently grapple with questions such as:

- Could the claimant realistically work?
- What work could they do?
- What earnings could they achieve?
- Were reasonable adjustments feasible? Were they offered and used? Were they realistic?
- Could redeployment have been successful?
- What is the long-term impact of discrimination or injury?

Vocational questions that can all be answered using the right skillset and expert.

4.1 Disability and Reasonable Adjustments

Vocational experts provide evidence on:

- Functional limitations
- Workplace adjustments
- Feasibility of redeployment
- Physical limitations such as manual handling or sitting restrictions
- Cognitive and psychological barriers
- Fatigue, pacing, and stamina
- Sensory sensitivities
- Executive functioning challenges

This is essential in cases involving:

- Autism
- ADHD
- PTSD
- Long Covid
- Chronic pain
- Stress related illness

Tribunals increasingly expect objective evidence rather than employer speculation.

Vocational experts understand and often recommend what equipment or adjustments could be used at work to help overcome these barriers.

4.2 Unfair Dismissal and Capability Cases

Vocational experts can determine:

- Whether the claimant could realistically perform their role
- Whether alternative roles were viable
- Whether the employer's expectations were reasonable
- Whether the claimant's job search was adequate
- What earnings the claimant could achieve post dismissal

This evidence can significantly influence the future earnings potential or remedy.

4.3 Pre-Tribunal Negotiations

Vocational evidence often leads to early settlement or avoiding any Tribunal costs because it:

- Clarifies earning capacity
- Reduces uncertainty
- Strengthens negotiation positions
- Provides objective evidence for both sides to reach a mutual realistic agreement.

Using vocational reports as a strategic tool is why, in our experience at Circle, solicitors and individuals are increasingly instructing.

For example, a lady in her thirties with autism, ADHD, anxiety and some mild speech difficulty who had been placed under investigation of a client complaint at work. She had only received 1 adjustment out of 14 recommended adjustments previously assessed by Occupational Health and Access To Work. This instruction was to resolve a grievance with her employer prior to taking it to Employment Tribunal. Various recommendations were made to assist all parties avoid this costly and stressful action.

5. The Psychology of Work: Why Medical Evidence Is Not Enough

Medical experts answer:

- What is the diagnosis?
- What are the symptoms?
- What are the impairments?

Vocational experts answer:

- What does this mean for work?
- What tasks can be sustained?
- What environments are suitable?
- What adjustments are required?
- What roles are realistic?
- What earnings are achievable?

This distinction is critical.

A person with chronic pain may be able to sit, stand, and walk — but not for long enough to sustain full time employment.

A person with ADHD may be highly intelligent — but unable to cope with high pressure deadlines or more unstructured or chaotic environments.

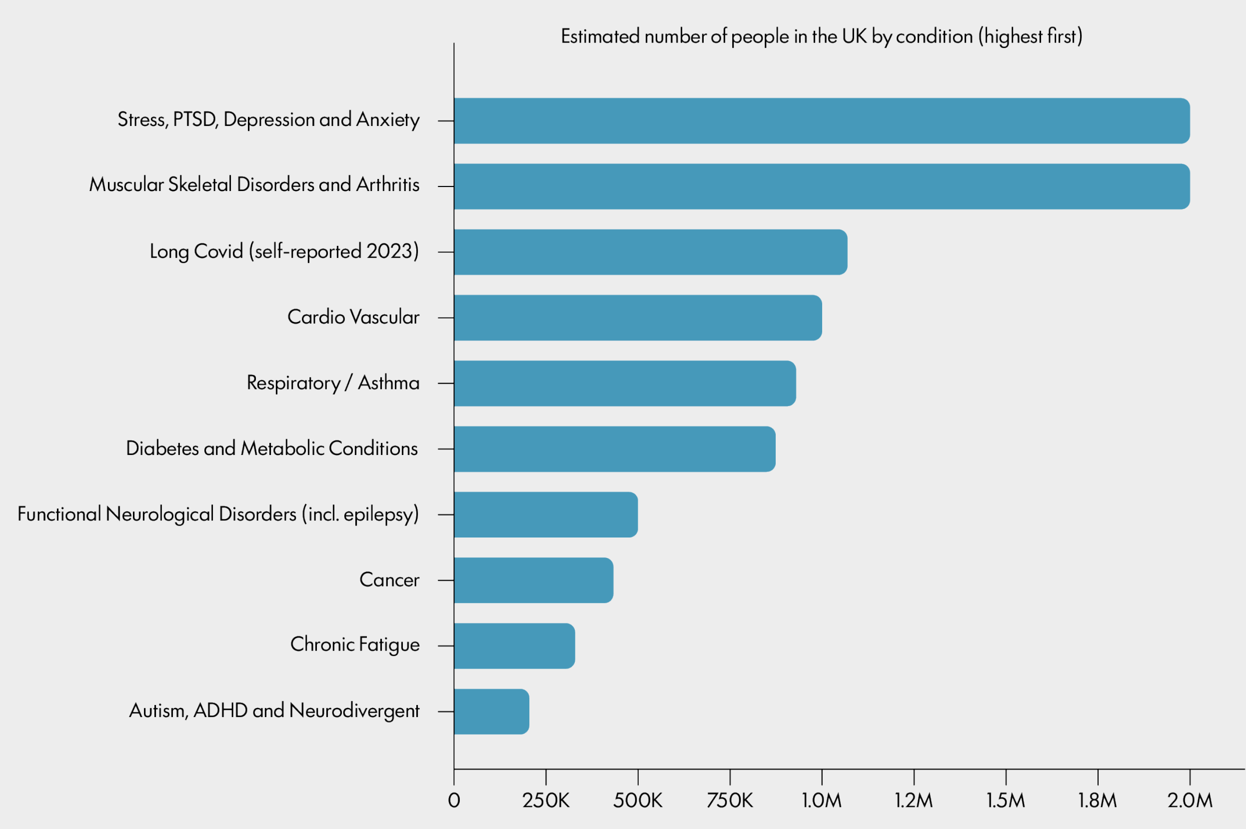
A person with PTSD may be physically capable — but unable to tolerate customer facing roles due to added potential for stress or conflict.

Vocational experts integrate functional, psychological, and occupational evidence into a coherent whole.

6. The Rise of Neurodivergence, Long Covid & Complex Conditions

The modern labour market is seeing a surge in health conditions as detailed below

Graph created using Microsoft CoPilot from researched data:



Health conditions and symptoms require vocational expert nuanced understanding on any potential for work.

It is of concern to note that in 2023, working age adults reported a health limited condition rising from 15 to 20%. Plus 4 million people were economically inactive (an increase from 3.2million in 2013) due to ill health. People reporting ill health had 5 or more conditions.

It is also important to note that neurodiversity diagnosis is increasing. According to React Neurodiversity, JobSearch and Work Report 2024, one in ten people are considered to have neurodivergent symptoms. www.gov.uk states that " Just 31% of people with a neurodiversity condition in employment compared to 54.7% of disabled people overall"

Vocational experts consider:

- Cognitive load
- Sensory demands
- Executive functioning
- Fatigue management
- Environmental triggers
- Adjustment needs
- Feasibility of hybrid or remote work

This is often far beyond the remit of most medical or other experts.

7. What Happens When a Vocational Expert Is Not Used

The consequences can be significant including...

- Under compensation of claimants because courts or Tribunals may underestimate the impact of injury or illness on employability.
- Over compensation of claimants as Courts or Tribunals may assume a person cannot work when they can.
- Unfair spousal maintenance orders whereby one party may be expected to earn more than is realistic.
- Misinterpretation of medical evidence because medical reports do not translate directly into vocational outcomes.
- Incorrect assumptions about labour market opportunities as Courts or Tribunals may assume jobs exist that do not.
- Failure to understand neurodivergent, psychological or more complex health conditions and their barriers to work. This can lead to harsh or unrealistic expectations.
- Increased litigation risk whereby lack of vocational evidence leaves decisions vulnerable to challenge.

Vocational experts reduce these risks by providing objective, evidence and experience-based clarity.

8. The Future of Vocational Evidence in UK Law

Given the Circle Vocational experience and our research, the need for vocational experts will continue to increase. The reasons for this are as follows:

- The labour market is changing rapidly as automation, AI, hybrid work, and skills shortages mean employability is more complex than ever.
- Courts and Tribunals are increasingly expect evidence, not assumption. They require detailed, functional, evidence driven assessments from a vocational expert.
- Neurodivergence and mental health conditions are rising which require specialist vocational interpretation.
- Long Covid is creating new patterns of disability and Vocational experts are essential in understanding its long term impact.
- Hybrid and remote work have transformed job feasibility whereby Vocational experts can map realistic opportunities.
- The legal system is becoming more interdisciplinary. Courts and Tribunals now expect integration of medical, clinical, therapy, psychological, occupational, and labour market evidence. Vocational experts are uniquely positioned to provide this.

In Conclusion: The Vocational Expert as the Court's Guide Through Complexity

In a world where work is evolving faster than ever, vocational experts have become indispensable. They provide the bridge between medical or clinical and therapeutic evidence, personal history, functional capacity, transferable skills plus labour market reality.

Across personal injury, family law, employment law, and tribunal litigation, vocational experts ensure that decisions about earning capacity, employability, and future employment or job prospects are grounded in evidence, not assumption.

They protect claimants from under compensation, protect defendants from overcompensation, support fair spousal maintenance decisions, clarify complex employment disputes, reduce litigation risk, bring objectivity to emotionally charged cases and help courts or Tribunals to navigate the realities of modern work.

In summary, Vocational experts are the hidden architects to provide fair outcomes. They can be

instructed as a single, joint or single joint expert. They provide specific opinion and evidence about that client not just a client who works in an office, as a Nurse or in any other job role. Vocational experts help to triangulate information making it specific to that individual.

Not only do vocational experts help the legal system. They can help guide recommendations to enable people who are able to work to do so with impact on our economy. The core of our population, of working age, and a total of 6.5million people are either in work with a health limiting condition using adjustments or out of work due to long term sickness.

In my opinion and experience, as the labour market continues to evolve, the vocational expert role will only become more central to the pursuit of justice.

Maria Morris is available for instruction across the U.K, to request her C.V or discuss your Expert requirements, please email expert@circlecm.com or call 0129724145. Find out more about Circle Case Management by visiting www.circlecasemanagement.com
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Andrew Baird

Consultant Urological Surgeon

Profile

Mr Andrew Baird is a Consultant in Adolescent and Reconstructive Urology. He graduated from The University of Liverpool Medical School in 1995 and trained in general surgery and urology before beginning higher surgical training in adult urology in the Mersey Region.

His research interests include the long term outcomes for Bladder Exstrophy/Epispadias complex, and long term outcomes of reconstructive urological surgery in children and young adults.

Mr Baird is a panel reviewer for a number of Urological journals, and a regular invited speaker at International events talking on Exstrophy/Epispadias, Adolescent Urology and Transitional Care.

Medicolegal Experience

Mr Baird regularly undertakes medicolegal cases in the areas of medical negligence (for plaintiff or defendant) and personal/accidental injury claims.

His areas of specialist urological expertise are reconstructive urology, voiding dysfunction, adolescent urology and some areas of paediatric urology.

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Dr David Roger Thomas

Consultant Forensic Psychiatrist

MB BCh FRCPsych

As a Consultant Psychiatrist for over thirty eight years I have in my professional career prepared hundreds of medico-legal reports, both forensic and civil in nature and attended Court on numerous occassions to give evidence. I have however recently retired fully from hospital work and for personal reasons moved from South Wales to the West Midlands. As a result of this I have lost contact with many of my Welsh Solicitor colleagues and am not acquainted with Solicitor Firms in the Midlands Region

Over the years I have prepared many criminal reports for the Court and attended Court on numerous occassions, I have also had a very active role in preparing Civil Reports of various types and again have attended Court on many occassions in relation to these. The bulk of my Civil Medico-legal work has been in relation to PERSONAL INJURY and MEDICAL LITIGATION. I have however to a lesser degree also been involved in report preperation for the Family Court. I have a special interest in preparing medico-legal reports for individuals with NEURO-ATYPICALITY. Indeed on a private clinical basis I am involved with the assessment and management of Adults with ADHD. I have also prepared Independent reports for Mental Health Review Tribunals and reports on doctors which have been requested by the General Medical Council.

Finally in terms of the split between preparing reports for Prosecution v Defence, my ratio is very roughly 60:40 %. With Civil cases, Claimant v Defendant, it would be 50:50 %.

I appreciate that a fast turnaround is required with medico legal cases, but I am always scrupulous in ensuring that all required clinical details have been carefully read and understood in the context of the particular case before I prepare the final report.

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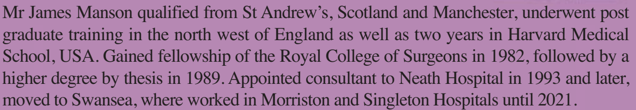
Mr James Manson Consultant Surgeon

BSc, MBChB, FRCS, ChM



Mr James Manson qualified from St Andrew's, Scotland and Manchester, underwent post graduate training in the north west of England as well as two years in Harvard Medical School, USA. Gained fellowship of the Royal College of Surgeons in 1982, followed by a higher degree by thesis in 1989. Appointed consultant to Neath Hospital in 1993 and later, moved to Swansea, where worked in Morriston and Singleton Hospitals until 2021.

Initially a general surgeon, Mr Manson has become a specialist in upper gastrointestinal surgery, particularly surgery of the oesophagus, stomach and gallbladder. He has extensive experience of laparoscopic cholecystectomy (over 2000 procedures) and minimally invasive anti-reflux surgery (over 300 procedures), also performing 400 oesophageal and gastric resections for malignancy. Audited and presented outcomes in all these areas compare favourably with results produced anywhere in the world. In addition, over 20,000 upper GI endoscopies carried out, both diagnostic and therapeutic, including dilatation, stenting, ablation, endoscopic mucosal resection.

With 40 years experience on the emergency rota as a general surgeon Mr Manson can provide expert opinion on any case relating to a general surgical emergency.

Mr Manson has prepared over 400 reports in cases of alleged clinical negligence, both for the defendant and claimant. In addition he provides Condition and Prognosis reports (following consultation) in appropriate cases of Personal Injury (largely abdominal injury). Extensive experience in conference with Counsel, expert's meetings and Court appearances.

Mr Manson continues to teach, examine at intercollegiate level (the most senior general surgical examiner in the British Isles), has a licence to practice, and is subject to regular appraisal and revalidation by the GMC.

Instructing solicitors include Hempsons, Ward Hadaway, Lees & Partners, Pannone, Gadsby Wicks, Thomson Snell Passmore (lead expert in a class action), Slater and Gordon, Campbell Smith, Graystons, Williamsons, Kingsley Napley, Admiral Law, Moonerams, Alsters Kelley, Drummond Miller and Jones Whyte (Scotland), Cian O'Carroll, McNally & Co, Carson McDowell and Lynch Solicitors (Ireland).

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Mr. Fahid Rasul

Consultant Neurosurgeon

FRCS (Neuro.Surg), MPhil (Cantab), MSc, BSc (Hons)

Mr Fahid Rasul is a highly accomplished and experienced consultant neurosurgeon and spinal surgeon. He is a full-time practicing consultant neurosurgeon in the NHS and his practice encompasses the full range of brain and spine disorders.

Mr Rasul provides medicolegal reports and acts as an expert witness on request. His areas of expertise include:

- Spinal surgery and spinal injuries - trauma, infection, degenerative conditions, tumours, scoliosis
- Cauda equina syndrome
- Complex spinal surgery (involving insertion of implants)
- Traumatic brain injury
- Brain tumours
- Hydrocephalus
- Medical negligence and causation

Mr Rasul is regularly instructed by Defence and Claimant Litigators. He assesses each case on individual merit.

Medicolegal training: Cardiff University Bond Solon Expert Witness certificate

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Statistical Evidence in Recruitment Discrimination Cases

by Peter Crowley, Actuary & Owner of Windsor Actuarial Consultants Ltd

Employment Tribunal cases frequently involve arguments about recruitment or promotion statistics. claimant may argue that an observed outcome - for example, a particular demographic pattern among successful candidates is unlikely to have arisen without discriminatory decision-making. Conversely, respondents may argue that the outcome simply reflects the composition of the applicant pool or normal statistical variation.

Determining which interpretation is more plausible requires quantitative analysis. By modelling the relationship between the applicant population, the selection process and the recruitment outcome, it is possible to estimate the probability of observing particular results under different assumptions. Such analysis cannot determine the legal outcome of a case, but it can assist tribunals and legal representatives in interpreting recruitment statistics more rigorously. The analytical framework described here has been implemented in the Diversity Maths Modelling Toolkit.

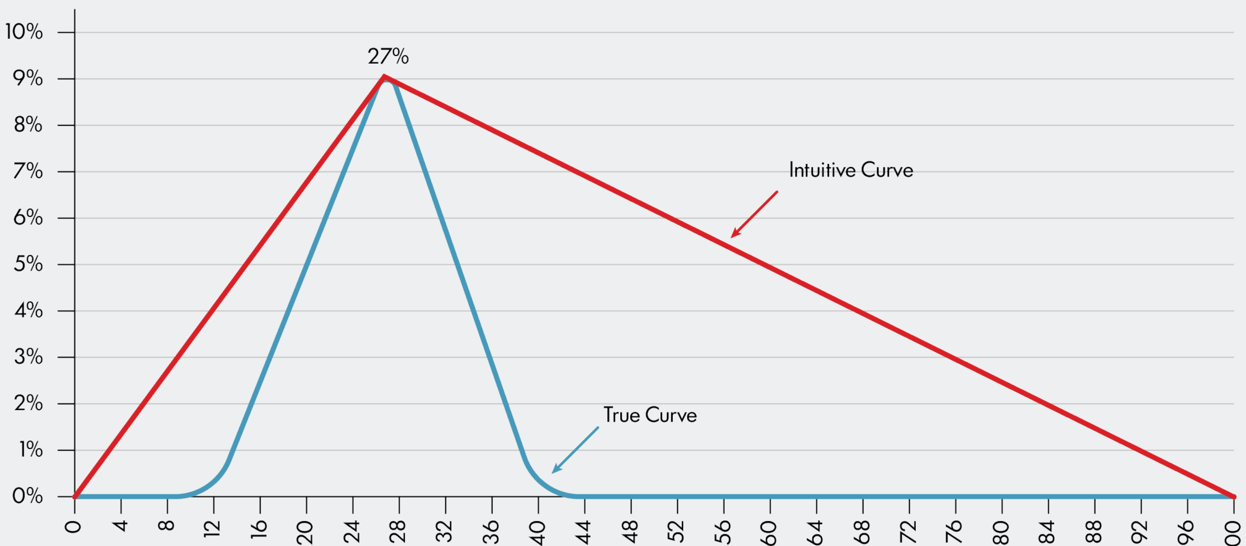
There are four useful tools in this area:

1. Recruitment Probability Curve

If a particular group represents approximately 27% of the relevant recruitment population (for example, among graduates achieving first or upper-second degrees), recruitment outcomes might normally be expected to cluster around that proportion, subject to variation arising from the selection process and other factors.

Probability modelling allows the expected range of outcomes to be calculated. Assuming that recruitment is totally anonymised for factors other than degree, which avoids any unconscious bias, the likelihood of various results is shown below:

NB, In practice, recruitment outcomes may differ from the underlying population proportion for a variety of reasons, including selection criteria, interview performance, or organisational priorities.



It can be seen from the horizontal axis and the blue line that results outside the range 16 – 38 are unlikely. However, many people would assume that reality is the red line, ie, that large (or small) figures are realistic, unless other factors are substantially in play.

One interesting factor is that the smaller the representation, the smaller the range of likely outcomes, which will make it harder to conform to "Mansfield Rule" advances.

2. Selection Mechanisms and Recruitment Outcomes – Factor Q

Factor Q represents the influence of attributes not captured by academic scores — such as interview performance, perceived potential or organisational fit — which may alter the ranking of candidates once formal thresholds have been passed.

If we now assume an even distribution of merit over race (so, in the above example, any talent band replicates the total population), we can isolate the effect of Factor Q. Awarding a notional number of points to each individual (say 1 – 1,000) allows us to rank the population, and assume every nth individual is in our category (for our BAME example, we can use 25% as an approximation for 27%, which is one in four). So if, for example, we have recruitment of 45%, what is the effect of Factor Q?

An obvious way to do this is to apply a multiplier to the marks obtained by each BAME individual, then see what multiplier delivers the required result. For the above example, the boost (Factor Q) required is 13%, as the illustration below shows:

We are recruiting		100		Note - score will be > recruits to allow for those boosted into selection				
Assumed BAME/Ect Frequency					BAME Boost Macro			
One in		4			Apply adjustments to create new column			% W/BAME/BLACK RE
Corresp %		25.00%	Expect >	25	Sort			45.0%
Boost by score uprate factor PLUS %:		13.0%	0%		Evaluate # Whites now rejected			# F/BAMES/BLACK CA
Boost by rank - red'n factor decimal		1	1			Run on Score	Run on Rank	= M/WHITES/W+A PUS
		Say 10 tests each scoring 1-200			Clear			20
Even Merit Distribution			Boosted - Formulae			Boosted - Data then Sort		Default = score
Key	Rank	Score	Key	Pre Adjusted Rank	Adjusted Score	Key	Pre Adjusted Rank	Adjusted Score
2	1	1000	2	1	1130	2	1	1130
1	2	999	1	2	999	2	2	1125.48
1	3	998	1	3	998	2	3	1120.96

3. The Stubborn States Framework

– Why Workforce Composition Changes Slowly

These programmes examine targets set for the total workforce (eg, raise female representation from 35% to 50%), or a subset (eg, the partnership). Here we set assumptions for recruitment and exit/promotion rates for each group and feeder group. Calculations can be deterministic (ie, one set of assumptions), or stochastic (running on many assumption setts, possibly up to a million runs), and seeing what is required in order to achieve those targets.

For any group, the ONLY sources of change are volumes and shares of recruits and movers – and the constitution of feeder groups is essential in assessing the feasibility of published or even internal targets.

This can be approached in two ways:

a) Single group – a Recruitment Flow Model. Assume our feeder group is stable and consider the behaviour of our main group. For example, consider progress of the partnership just looking at principal promotions, and

b) Multistate – a Promotion Flow Model. This considers the changeability of all support groups. This could be appropriate if assessing the effect of graduate recruitment mix in changing the partnership.

The diagram on the next page gives a sample of type a) run results.

Key Inputs and Outputs											
Success?	M Rec Rate	F Rec Rate	F Rec as % all Recs	M Exit Rate	F Exit Rate	Exit Rate Delta	Trans M>F	Trans F>M	Trans Rate Delta	Staff at End	Increase in Staff
0	5.2%	10.8%	53.0%	1.4%	2.4%	-1.0%	1.1%	1.4%	-0.2%	**50,020**	5.3%
All Run Results - to sort by Col E											
xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx
Success?	M Rec Rate	F Rec Rate	F Rec as	M Exit Rate	F Exit Rate	Exit Rate	Trans M>F	Trans F>M	Trans Rate	Staff at	Increase in
xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	% all Recs	xxxxxxxxxx	xxxxxxxxxx	Delta	xxxxxxxxxx	xxxxxxxxxx	Delta	End	Staff
1	1.6%	24.4%	89.2%	22.9%	3.5%	19.4%	4.6%	2.4%	2.2%	**44,276**	-6.8%
1	1.1%	17.8%	90.1%	30.0%	0.5%	29.5%	4.6%	0.7%	3.9%	**41,377**	-12.9%
1	0.2%	16.2%	97.5%	20.1%	2.0%	18.1%	4.9%	0.6%	4.3%	**43,684**	-8.0%
0	8.0%	0.0%	0.0%	17.2%	28.7%	-11.5%	1.8%	3.3%	-1.4%	**39,698**	-16.4%
0	16.0%	0.0%	0.1%	1.8%	22.8%	-20.9%	3.2%	3.5%	-0.3%	**48,061**	1.2%

Real Life Examples

The Furlong decision

https://tinyurl.com/4vyb9528

In Furlong v Chief Constable of Cheshire Police the tribunal considered recruitment practices designed to alter workforce representation. The case illustrates how attempts to adjust representation through recruitment alone may encounter legal and operational difficulties, particularly where the broader workforce dynamics have not been analysed.

The Essop decision

https://tinyurl.com/36krvdev

In Essop v Home Office, statistical evidence played an important role in demonstrating the disparate impact of an examination requirement on particular groups of candidates.

The analytical techniques described in this article may also be useful in the preparation or evaluation of statistical evidence in employment litigation. In cases where recruitment or promotion outcomes are disputed, probability modelling can assist legal representatives in assessing whether observed patterns are consistent with the underlying candidate population or whether they would be statistically unusual under neutral selection assumptions. In appropriate cases, such analysis may form part of expert evidence presented to the tribunal.

Summary

Quantitative modelling cannot determine the legality of recruitment decisions, which remains a matter for tribunals.

However, it can provide a structured framework for interpreting recruitment statistics and assessing the plausibility of particular outcomes.

The Diversity Maths framework provides a structured method for performing this type of analysis.

Author

Peter Crowley is the developer of the Diversity Maths analytical framework, which models recruitment outcomes and workforce dynamics using probability-based methods.

His work focuses on the statistical interpretation of recruitment and workforce data in organisational and litigation contexts.

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Windsor Actuarial Consultants is an independent firm of actuarial consultants with considerable expertise in derivatives and pensions. Our excellent actuarial consultancy is complemented by our cutting-edge software and technical support.

We are an owner-managed business.

Our consultants are major stakeholders in the firm. They can provide the advice our clients need and they also have a vested interest in ensuring that they get the best service possible.

The level of personal commitment from us could not be higher.

Our clients include family lawyers, trustees and sponsors of pension schemes, financial advisers, solicitors and individuals.

Peter Crowley, established **Windsor Actuarial Consultants** in 2005, combines a wide experience of financial products and pensions with a commitment for explaining the concepts in plain English.

Peter also advises solicitors and other professionals on the individual aspects of pensions in divorce, compensation on the loss of pension rights, pensions mis-selling and reversions. He has produced a substantial number of reports on this subject,involving cases of varying complexity, and including overseas pensions

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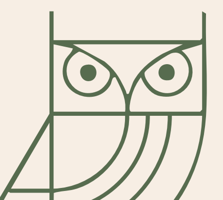
Agewise Medicolegal Experts



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Dietetics

Rebecca McManamon (MNutr, RD, HCPC-Registered) - Rebecca McManamon is an HCPC registered Dietitian and experienced medico-legal expert specialising in clients with complex needs following brain and spinal injury, polytrauma and cerebral palsy. She prepares expert reports for claimant, defendant and joint instructions.

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Dr Duncan Dymond

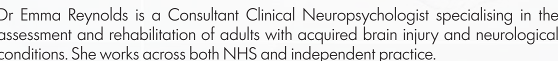
MD FRCP FACC FESC
Consultant Cardiologist

Dr Duncan S Dymond has been a consultant cardiologist at St Bartholomew's Hospital, now a part of Barts Health NHS Trust since 1987.

He has been undertaking expert witness and medicolegal work for more than 12 years and has completed his Cardiff University Bond Solon expert Witness course.

Dr Dymond currently completes 1-2 medicolegal reports per week, for personal injury and medical negligence, with roughly a 60/40% split claimant/defendant.

He has also completed expert witness work for the General Medical Council, the Medical Defence Union and the Crown Prosecution Service as well as accepting private instructions directly for solicitors. He has also provided mediolegal opinions for cases in Singapore.



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Dr Emma Reynolds

Consultant Clinical Neuropsychologist

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Specialist Register of Clinical Neuropsychologists (SRCN)

Dr Emma Reynolds is a Consultant Clinical Neuropsychologist specialising in the assessment and rehabilitation of adults with acquired brain injury and neurological conditions. She works across both NHS and independent practice.

Dr Reynolds has extensive experience in medico-legal work and provides expert neuropsychological reports for solicitors' firms and medico-legal agencies. She receives instructions from both claimant (approximately 55%) and defendant (approximately 45%) representatives and prepares around 90 reports per year. She regularly acts in cases involving personal injury and clinical negligence.

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Hope Capital Ltd v Alexander Reece Thompson LLP

by Expert Evidence.

In 2018 a historic Grade 2 listed National Trust property known as Cedar House was put on the market. It dated back to the 15th century and had many original features including a huge medieval main hall, and had had many well-known guests over the years including, at one time, Lord Nelson. It was situated in Cobham Surrey and in more recent times had been a high-end hotel and restaurant.

The defendant ('ART') was a firm of chartered surveyors and property consultants and had valued Cedar House at £4,000,000 in its report dated 14 February 2018. Cedar House was intended to be the security for a bridging loan. This bridging loan was for £2,215,440 excluding interest and fees and was provided to St Anselm Heritage Properties by Hope. St Anselm reneged on the loan and Cedar House fell into the hands of receivers in November 2018. Cedar House was finally sold in October 2020 for the greatly reduced price of £1,400,001.

Hope Capital brought proceedings against ART alleging that the loss in value of the property was due to ART's negligence in initially overvaluing the property for collateral for the bridging loan. They argued that the true value was only £2,150,000, and that by funding the bridging loan they'd lost a total amount of £2,527,749. This was a cumulative figure made up of different losses: – loss of profit on the deal, loss of capital and loss of interest on the loan.

> *"When I was young, I thought money was the most important thing in life; now that I'm old I know it is."*
>
> **Oscar Wilde**

ART admitted that it had breached its duty of care towards Hope and that it had been negligent. The Court had to decide whether Hope had suffered any loss as a result of that negligence, how much the loss was and also whether Hope had been guilty of contributory negligence. The loss would be limited to the difference in the original valuation of £4,000,000 and £1,950,000 which is what Hope claimed should have been the correct 180-day valuation of Cedar House at that time. A 180-day valuation is what is commonly used in bridging finance and many finance companies will only lend against this particular valuation. It is the value of a property assuming there were only 180 days to advertise and sell the property i.e. often some 5%-15% lower than the open market value, depending on the type of property. Judge Nicol, taking into account the "uncommon" nature of the property agreed that a valuation of 15% above or below the true value was acceptable and would not have been considered negligent. He thought the true valuation should have been £2,475,000 which was well below the 15% tolerance value, and that ART's valuation was therefore incompetent. There were a couple of external factors leading to the eventual drop in sale value of Cedar House – the unprecedented collapse in the property market due to the global pandemic and Cedar House's reputation as a 'problem property' due to difficulties with the National Trust. The Judge also found that Hope's conduct contributed to making Cedar House incapable of a quick sale and on that basis they had not suffered loss of capital.

The key issue at the heart of the case was whether the duty of care owed by the valuer was greater than normal (i.e. simply providing a valuation opinion on which the lender was entitled to rely), in effect protecting the lender against all risks associated with the transaction. Given that the principles of this case were similar to numerous other property transactions, the Judge noted that there would have had to be a direct communication between the parties extending the duty of care to a higher level. The fact that this particular valuation was the only "green light" in the whole process was not sufficient to extend that duty of care to a higher level.

> *"The lack of money is the root of all evil."*
>
> **Mark Twain**

The Judge concluded that even though ART had been negligent in giving the original valuation,

Hope had suffered no actionable loss as a result of the negligence and therefore the claim for damages by Hope was dismissed.

The experts for both sides gave evidence that an exit strategy for the lender is a fundamental consideration in any lending decision particularly if it involves, as it usually does, the sale of the property. In this case there was no basis to consider that the a change to residential use for the property would have been a viable option as the owner was a company and residential use would only be granted to an individual. The borrower, Mr Pieri's company, had a poor his credit rating and doubts about his ability to achieve the conversion and the honesty of his application left the Claimant in a weak position given the lack of investigation prior to the loan being granted. Both expert agreed that the lending had been imprudent as a minimum. The problems were then made worser by the lack of supervision of the going construction works.

If it had come to a decision of contributory negligence, the Judge said that such were the failings on both sides that, should he have to have made a determination, he would have set the figure at 50%.

This case is important in that it underlines the established principle that a duty of care is owed by a surveyor to the lender who has instructed him to value a property. If the valuation falls outside the accepted parameters for that particular property there may be a breach of contract. Only if there is direct financial loss resulting from that breach will there be grounds for a claim for damages resulting from professional negligence.

In this case, both the experts were sourced from Expert Evidence International Limited. Expert Evidence prides itself on assisting throughout the legal process where required and is a professional firm concentrating on the four main areas of dispute resolution; acting as expert witnesses in financial litigation, mediation, arbitration and adjudication. The firm has a civil, criminal and international practice and has advised in many recent cases. Areas of specialisation include banking, lending, regulation, investment, and tax.

Reference

Hope Capital Ltd v Alexander Reece Thompson LLP [2023] EWHC 2389 KB

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"Lost years" claims by child claimants permitted by the Supreme Court

by Jonathan Fuggle, Partner at Browne Jacobson.

In CCC v. Sheffield Teaching Hospitals NHS Foundation Trust, Mr Justice Ritchie granted the claimants permission for a leapfrog appeal to the Supreme Court on the issue of whether loss of earnings in the so called "lost years" could be recovered by a child. The case came before the Supreme Court on 11 and 12 February 2025.

What are the "lost years"?

As a result of a shortened life expectancy, a claimant may suffer future financial losses. The issue before the Supreme Court was whether child claimants can claim for the loss of earnings they may suffer after their likely death (the so called "lost years").

Adult claimants

In both Pickett v British Rail Engineering Ltd [1980] AC 136 ("Pickett") and Gammell v Wilson [1982] AC ("Gammell") the House of Lords found that an adult claimant can recover damages for loss of "financial expectations" during the lost years.

The House of Lords decided that these were pecuniary losses because the claimant had been deprived of the opportunity of distributing the income in the way they desired. The unfairness to dependents by not allowing recovery for income in the lost years was considered the principle social reason for permitting recovery. Recovery was possible regardless of the actual existence of dependents. The only caveat was that the loss should not be considered too remote to be measurable.

Child claimants

Whilst recovery of loss of earnings in the lost years has been permissible by adult claimants, recovery by child claimants has been barred since the decision of the Court of Appeal in Croke v Wiseman [1982] 1 WLR 71 as such claims were considered to be too speculative.

The Supreme Court's decision

In a decision handed down by Lord Reed, on 18 February 2026, the Supreme Court found by a majority of 4 to 1 (Lady Rose dissenting) that Croke v Wiseman was wrongly decided and that the claimant's appeal should be allowed.

Lost years damages can now be recovered in cases where the claimant is a young child, just as they can in cases where the claimant is an adolescent or adult.

Reasons for the decision

- **There was no principled basis for distinguishing between claimants with and without dependants**: The majority (Lord Reed) held that lost years damages compensate the claimant for her own loss, not anyone else's. Her right to damages does not depend on how she might choose to use them or whether she has dependants. Whilst Parliament could make such distinctions for policy reasons, the courts must not create arbitrary categories based on the presence or absence of dependants.
- **Speculation and assessment difficulties do not justify denying compensation:** Damages are compensatory and intended to place a claimant in the position they would have been in but for the negligence. This principle applies equally to children and adults. The court cannot exclude recovery because of a claimant's age.
- **Uncertainty is inherent in all future loss claims:** Courts must do the best they can on the available evidence.
- **Courts routinely award damages to child claimants for loss of earnings during their lifetime:** If this is possible, there is no principled reason why the same evidence and approach cannot be used to assess earnings during the lost years (with appropriate deductions for living expenses).

- **Lack of concrete distinctions:** If young children were excluded because their loss cannot be precisely quantified, it would be unclear where to draw the line between young children, older children, and adults, leading to arbitrary and incoherent distinctions.

Conclusion

The claimant's case will be remitted to the Trial Judge to decide whether the claimant should be awarded lost years damages on the facts of her case and, if so, what the value of that award should be. Browne Jacobsons' specialist team for health and social care disputes will continue to monitor the case. There are reserving implications for insurers, local authorities and the NHS.

Dr Samah Boulis

Experienced GP and Senior clinical navigator for GP Clinical Assessment Service

BSc (Hons), MBBS (Imperial), DSEM, DFSRH

Dr Boulis is a very experienced General Practitioner who provides expert evidence in medico-legal proceedings. She works as a full time NHS GP and is fully registered with the General Medical Council and is also on the Medical Performers list for GPs.

She has background training and experience in various specialist settings focused on paediatrics, trauma and orthopaedics, psychiatry, sexual health and HIV. She has nearly a decade of surgical experience with 4 years as a Specialist Registrar in Trauma and Orthopaedics. In addition, she held the positions of Trauma Fellow in a busy NHS hospital as well as Senior Registrar in complex military trauma and neurological rehabilitation with the Ministry of Defence.

Dr Boulis is able to assist as expert advisor or receive instructions in the following areas of expertise:

- All aspects of care in general practice delivered by a GP
- Claims for breach of duty and negligence of care delivered by a GP or GPs in settings of GP practices, urgent treatment centres and walk in centres
- Telephone triage of patients in primary care and emergency services (including out of hours, 111 and 999).
- Assessment and management of all illnesses, injuries and chronic diseases by a GP in settings of GP practices, urgent treatment centres, primary care centres and walk in centres.

Dr Boulis has published works and abstracts, such as ;Subclavian artery injury following isolated clavicle fracture, which to repair first?' S.Boulis & S. Samad:Int J Ortho Sur. 2006. Vol 3. Her Presentations include;Safe prescribing in paediatrics. Poster at the Wessex patient safety conference 2011.

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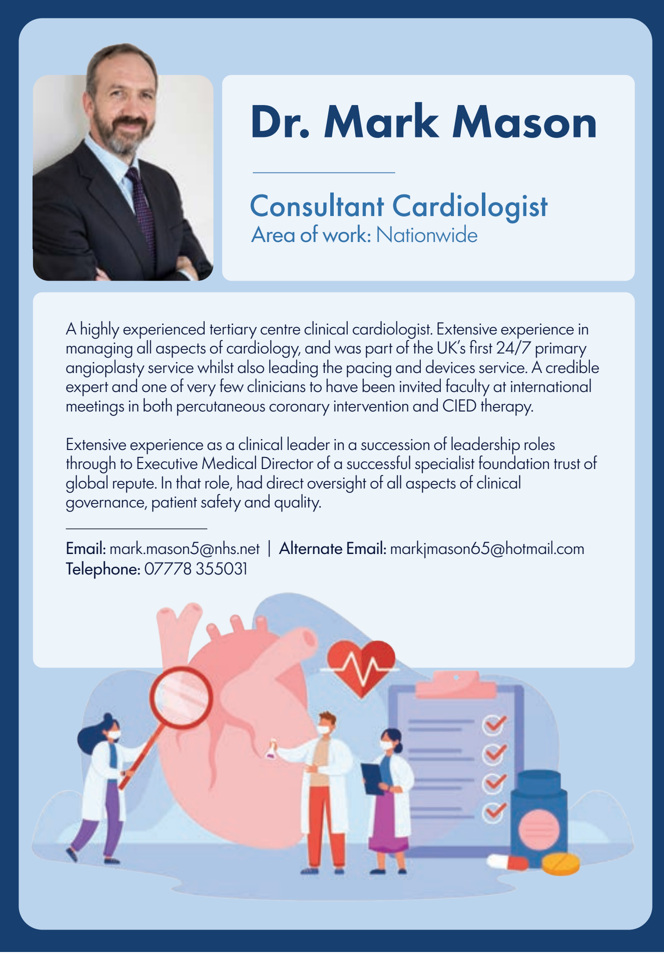

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AI & liability - does English law need to change?

by Nick Payne & Nina O'Sullivan, Lawyers at Mishcon de Reya.

In brief

- The UK Jurisdiction Taskforce (the UKJT) has published a draft Legal Statement considering the potential novel legal issues that harms caused by AI may give rise to, and the extent to which English law can address them.
- The UKJT takes an optimistic view of the ability of AI based harms to be addressed by existing English law principles. However, it identifies a number of conceptual and practical challenges.
- The Legal Statement seeks to reassure readers that there is less uncertainty as to how AI harms will be dealt with by the English courts than may be thought. However, until the English courts are able to grapple with these issues through issuing judgments on particular cases, inevitably there will be some significant question marks to be considered when dealing with AI tools.

The UKJT Legal Statement

In January 2026, the UKJT (an "industry-led initiative, tasked with promoting the use of English law and UK's jurisdictions for technology and digital innovation") published a draft Legal Statement on "Liability for AI Harms Under English Private Law". This Legal Statement forms the basis for a public consultation on how English law can, and should, impose liability for losses caused by the use of AI.

The fundamental questions addressed by the Legal Statement are:

- Can an AI itself be liable for losses it causes as a matter of English law?
- Who else could or might be liable for such losses?
- Does the nature of AI and AI based tools give rise to any particular difficulties or challenges in attributing liability for such losses?

- Do the answers to these questions indicate that English law as it currently stands is able to address the role that AI may come to play in day-to-day life?

Generally speaking, the UKJT's position is that, as a common law framework, the English legal system can "provide certainty and predictability in the context of technological innovation". As such, the UKJT sees English law as well placed to adapt to the challenges of using AI, and to modify or expand existing principles where necessary to account for unique issues that arise. Moreover, the report suggests that areas of "true novelty" will be rare; in most cases, the UKJT suggests, although the factual background (i.e. the use of AI) may be novel, "the application of well-established legal principles is reasonably straightforward".

However, the UKJT also acknowledges that there is at least a current "perception of legal uncertainty" in relation to liability for losses arising from the use of AI. This uncertainty could hold back adoption of AI, and lead to potentially unnecessary expenditure on risk mitigation such as the purchase of insurance. Accordingly, the UKJT considers it is important to address this potential uncertainty pre-emptively, rather than waiting for the issues to be addressed by the courts.

What is "AI" in this context?

As the Legal Statement acknowledges, there is no universally agreed definition of AI. The UKJT therefore adopts "technology-agnostic" definition which captures the novel key characteristics of AI. The UKJT identifies "autonomy" as the key novel characteristic of AI, defining AI as any "technology that is autonomous".

The Legal Statement describes autonomous technologies as ones which operate such that: the output that results from a given input is "unpredictable"; there is an "opacity of reasoning" in relation to the output generated; and there is limited power for the user to control the tool's output. It is these features that the UKJT considers give rise to particular legal challenges when ascribing liability for harms caused by the use of AI.

Why does AI give rise to legal uncertainty?

The UKJT identifies the basis for at least the perception of legal uncertainty as being that "English private law... has never previously needed to address the capability of autonomy... other than in humans".

Historically, liability has been attributable to a legal person based on either their voluntary actions, or those of a human agent acting on their behalf. However, the UKJT starts from the premise that AI is not itself a legal person, and cannot be approached as if it were one. The question therefore becomes: how should liability be ascribed for harms caused by the autonomous actions of AI?

This question is further complicated by other aspects of the way in which AI functions. For example, the opacity of the underlying models means it is usually difficult to identify why a particular decision was made. Often, multiple parties have been responsible for developing and training an AI tool, meaning it is hard to identify who is responsible for a particular issue. In addition, AI tools may be part of complex supply chains with multiple suppliers, making it harder to identify which party is liable for any one loss.

Can English law as it currently exists account for these novel issues?

As the UKJT notes, in many cases the relationship between the users and providers of an AI tool will be governed by some form of contract, which will allocate liability between the parties. It is also likely that contractual relationships will govern upstream liability allocation (e.g. between AI model developers and AI tool developers who use those AI models in their services or products). Where liability is dealt with by contract, the novel implications of AI will be limited to questions of causation.

However, the Legal Statement examines several circumstances where AI may give rise to novel liability issues:

Negligent use of AI

The primary form of non-contractual liability the UKJT envisages might arise as a result of AI is tortious liability for negligence. As in all such claims, a key question will be whether there is a relevant non-contractual duty that can be said to have been breached.

One scenario where there may be a negligence claim arising from AI use is where a legal person (the injured party) is harmed by the use of (or failure to use) AI by another legal person (the AI user). The Legal Statement suggests that English law can already account for such a situation by applying existing principles of negligence: if the AI user owed the injured party a duty of care then they may be liable for harm suffered by the injured party if it can be shown that their actions fell short of that duty of care. The fact the harm is caused by their application of AI tools (or failure to make use of AI tools where they should have) has no bearing on this legal analysis. The Legal Statement argues that "in many cases the addition of AI will simply be considered a tool of those who exercise relevant control over it, and can be said to have been "responsible for its actions"". The UKJT gives the

example of a radiologist using (or failing to use) AI tools to review medical imaging scans.

There may also be questions as to how far "up the chain" liability might travel where an AI model produced by one party is incorporated into tools developed by another party and in turn used by a third party. As the Legal Statement notes, this will be a highly fact specific question, but questions of liability in this regard in AI related claims are no different to those arising from any other tool or product.

However, negligence claims arising from the use of AI will give rise to novel questions as to whether the autonomous actions of the AI tool amount to a break in the chain of causation. If this is the case, the party that created AI model or tool may not be liable for harms caused by its output. It may also give rise to questions as to whether the behaviour of the AI tool could and/or should have been anticipated by the parties involved in developing it. Again, these will be highly fact specific issues, and are likely to require expert evidence to resolve.

False statements by AI

Another issue which the Legal Statement addresses is who might be liable for harm caused by false statements made by an AI.

The Legal Statement takes the view that such claims will generally depend on whether the particular statement made by the AI can be said to have been made "by or on behalf of" a particular legal person. As the UKJT takes the view that an AI cannot itself be treated as a legal person, claimants would need to show that the AI was making statements "on behalf" of another legal person. The same principle would apply to other claims based on statements (such as claims in defamation or deceit).

Again, this will be a highly fact-specific consideration. The authors of the Legal Statement acknowledge that in many cases this is not something that a claimant would be able to show. However, they suggest that "given that AI is generally used as a tool, the core negligence (if any) of the defendant legal person would typically be the careless acts that permitted the output, like the human decisions behind the AI tool's design, testing and deployment". In other words, the UKJT's view is that in most cases harms caused by false statements by AI will give rise to negligence claims against the developers of the relevant AI model or tool, rather than claims in misstatement, defamation or deceit.

Vicarious liability

Another key consideration is whether legal persons that develop AI models or tools which incorporate AI can be vicariously liable for any harms caused by that AI to its users.

There may well be circumstances in which the use of an AI tool gives rise to harm, but there is no negligence or other direct liability on the part of the developers of that tool. In those circumstances, the fact that, under current English law, AI does not clearly fall within the concepts of a legal person, it may make it difficult to ascribe liability to any party. If an AI tool is not itself a legal person then (under current English law principles) it cannot itself be liable for harms caused to a user by its output.

One route for attributing liability to a legal person might be by vicarious liability. However, a third party (such as the provider or developer of AI tools) can only be vicariously liable for the actions of another legal person. For example, whereas a company may be vicariously liable for the actions of one of its employees, if an AI tool is not a legal person itself then the operator of an AI cannot be vicariously liable for its actions. So, for example, a company may be vicariously liable for its employee's negligent use of AI, but cannot be vicariously liable for harms caused by erroneous AI output provided directly to a third party (e.g. a consumer).

Given that AI tools can act with a degree of autonomy, there is a potential gap in the law if there are circumstances in which neither the AI itself nor its operator can be held liable for harms arising from the AI's actions. As set out above, in many cases there will be contractual allocations of liability, but there may well be circumstances where this is not the case.

Causation

Causation is another aspect of English law that may give rise to complex issues when dealing with AI. The 'black box' nature of AI decision making (i.e. the fact that it is often impossible to discern the way in which an AI reaches any particular output) may make it difficult to demonstrate who is responsible for an output that has led to harm. This could manifest in a lack of evidence (i.e. records of the process undertaken by the AI) and/or opacity as to how the AI operates (i.e. the actual reasoning applied by the AI).

The Legal Statement takes an optimistic view on this issue, arguing that these difficulties "are neither more severe nor different in kind to the sorts of issues that arise in other domains and that the English common law is well able to accommodate". This may be the case. However, until such time as the courts grapple with these issues, it remains to be seen how much of an obstacle to claims they prove to be. Unless and until there is judicial consideration of these issues, there will inevitably be a degree of uncertainty.

Conclusion

The Legal Statement sets out a wide ranging and thoughtful analysis of how existing English common law may accommodate harms caused by AI.

The authors conclude that the flexibility of the English legal system will allow it to address the novel issues arising from the use of AI without needing specific legislation or other external developments. This, they argue, should assuage any concerns that the use of AI may result in unclear liability for its errors.

However, the Legal Statement also makes clear that there are many ways in which AI tools, and the claims that might arise from their use, are unique. As such, whilst existing law may well be able to flex to accommodate these aspects of claims relating to AI, there will remain potential uncertainty as to where liability will fall when it arises outside of contractual arrangements - until a body of case law is established.

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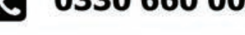

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Expert Determination: When is a Decision Enforceable?

by Andrew Ross, Senior Associate & Sophie Moussa, Associate at HFW.

The recent TCC decision in GSY Hospitality Ltd v Gladstone Court Developments Ltd [2025] EWHC 3231 (TCC) provides a useful reminder of the limits of expert determination, particularly where an expert strays outside their mandate by making an error of law. The judgment examines a deceptively simple question: if an expert reaches the "right" answer, but for the wrong legal reasons, is their determination still binding? In this case, the court's answer was a firm "no".

The facts

The dispute arose out of the development of a luxury hotel. GSY Hospitality (GSY) would purchase the leasehold of the hotel from Gladstone Court Developments (Gladstone) after the construction and fit out works had been completed by Gladstone (or on its behalf). The parties signed two separate contracts[1] and had agreed a contractual mechanism for apportioning certain costs (preliminaries, mechanical and engineering subcontractor overheads and profits, and firefighting lifts) between them. GSY's position was that the contractual mechanism required the costs to be apportioned strictly in accordance with a "Costs Apportionment" schedule. Gladstone's position at the expert determination stage was that the parties later agreed a cap on its liability of £800,000 through an informal variation of the agreement. This was less than it would have had to pay under the Costs Apportionment schedule.

The matter was referred to expert determination, which the parties had agreed in their contract would be binding except in cases of manifest error or questions of law. The expert concluded that the parties had agreed an informal variation introducing the £800,000 cap, based on (a) the oral evidence in

the form of witness statements, and (b) the absence of a challenge by GSY to interim applications or certificates issued by Gladstone that referred to the liability to these costs being capped at £800,000.

GSY asked the court to set aside that portion of the expert's determination on the basis of an error of law.

What was the error of law?

Both parties ultimately accepted that the expert's reasoning contained an error of law. Specifically, the agreements contained a No Oral Modification (NOM) clause requiring amendments to the contract to be in writing to be effective. In 2018, the Supreme Court confirmed that NOM clauses are enforceable in MWB v Rock Advertising.

The expert did not consider the NOM clause, nor the Rock Advertising case law.

The decision

Mr Roger Ter Haar KC, sitting as Deputy High Court Judge, held that failure to engage with these issues amounted to a clear error of law. Since the agreement provided that the expert's determination was binding, except in cases of manifest error, under the expert's mandate, he was required to reach a decision containing no error of law.

Gladstone argued that the decision could still be justified based on a separate legal doctrine, estoppel by convention.

Mr Ter Haar KC declined to engage with this issue, asserting that the issue at this stage was not whether the expert's answer could be justified, but whether the expert acted within the mandate given to him. As the expert had made an error of law and failed to consider the NOM clause, the process had materially departed from his instructions. Whether an estoppel might later provide an alternative route to the same result is a separate question.

The court revisited the established principles in Premier Telecommunications v Webb, which outline when an expert determination can be set aside, quoting paragraph (7):

> "*Once it is shown that the expert departed from his instructions in a material respect, the court is not concerned with the effect of that departure on the result. The determination is not binding.*"

Mr Ter Haar KC continued by explaining that experts must ask the right question. A determination cannot be upheld simply because it may have landed, by coincidence, on an answer that might later be legally justified. As the expert failed to consider the NOM clauses, failed to engage with the decision in MWB v Rock Advertising and had therefore applied the wrong legal tests, he had departed materially from his mandate, and as a result his determination on the apportionment issue was not binding. GSY were successful in having that part of the determination set aside.

Practical implications

The decision is a useful reminder to parties negotiating and operating construction contracts of some important points including:

1. **Check the small print** – From time-to-time, it may be expedient to amend the terms of your agreement. Check whether your agreement has a NOM Clause. If it does, make sure the amendment is agreed in writing and any other formalities are met.
2. **Do not assume informal discussions or conduct will be effective to vary a contract.** Informal arrangements and agreements between parties, however common in the construction industry, cannot bypass clear contractual terms.
3. **Think carefully about what dispute resolution forum is right for the parties and the project** – Parties should think strategically about their dispute resolution mechanism and ensure it aligns with their needs and priorities. For example, parties opting for adjudication could still appoint an 'expert' to determine the dispute (e.g. a quantity surveyor to determine a pricing dispute). In adjudication, an adjudicator is allowed to make an error in law, so long as it does not affect their jurisdiction or create natural justice issues. The parties may take the view that this greater certainty that the decision will stand is preferable. Adjudication is, of course, only binding pending a final resolution; expert determinations, by contrast, are final in nature and therefore subject to closer supervision where the expert steps outside their mandate.

4. **Framing the Question for an Expert** – Determinations by experts are vulnerable to being set aside if the expert has asked themselves the wrong question, even if their decision is legally justified or gives the 'right' answer on the merits. Parties can assist experts — and increase the chances that they will benefit from a defensible determination — by framing the question for experts. This requires a good understanding of the facts and the applicable contract provisions and law.

5. **The Expert's Mandate** – The critical question is whether the expert has complied with their mandate. Parties may wish to consider carefully how the mandate is framed to give an expert more or less flexibility but should keep in mind the potential impact of this on whether the eventual decision will be vulnerable to being set aside.

Footnote:

[1] The transaction was documented in two separate contracts (a SPA agreed between GSY and Gladstone; and an operating services agreement between Hyatt International, GSY and Gladstone).

For the original article, please visit:
www.hfw.com/insights/expert-determination-when-is-a-decision-enforceable/

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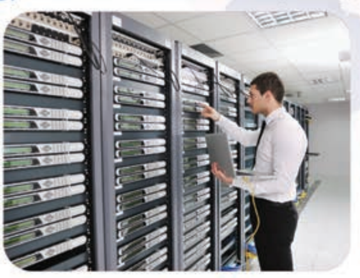

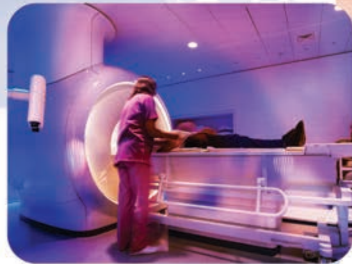

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Adjudication: Does the contract exist...and does it matter?

by Claire Kilpatrick, Managing Associate at Stevens & Bolton.

In an ideal world, before the start of any construction project, the parties would sign written contracts, clearly setting out all of the agreed terms between them. However, in reality, many works start before an agreed contract is in place. During the works there may be subsequent negotiations over contract terms between the parties which may or may not result in a signed contract or contracts. This unfortunately leaves room for future disputes over obligations, scope and fees...but what about the fundamental existence of a contract? In the recent case of High Tech Construction Ltd v WLP Trading and Marketing Ltd [2026] EWHC 152 (TCC) the court was required to consider whether the adjudicator had jurisdiction to decide a dispute in circumstances where one party argued that the contract pursuant to which he had had been appointed did not in fact exist.

Background

- High Tech Construction Ltd (HTC) carried out some construction works for WLP Trading and Marketing Ltd (WLP) between early 2023 and July 2024.
- Following completion of the works HTC commenced a 'true value' adjudication for alleged unpaid sums in connection with the works. The adjudicator was appointed following nomination by RICS by virtue of the adjudication provisions in a JCT D&B Sub-contract, which HTC said was the relevant contract for the works and had been executed at a meeting on 26 January 2023, and later circulated by WLP by email in June 2023 (the JCT Sub-contract).
- WLP raised a jurisdictional challenge and argued that the JCT Sub-contract was "not the genuine and binding agreement between the parties" and that it had been "fabricated and altered or misrepresented in a matter which amounts to fraud". In short, the argument was that the contract pursuant to which the adjudicator had been appointed did not actually exist and therefore the adjudicator had no jurisdiction to act in connection with this dispute.
- The adjudicator determined that he had jurisdiction to continue with the adjudication on the basis of the evidence before him at that time. WLP continued to participate in the adjudication under a reservation of rights and the adjudicator awarded HTC the sum of £2,142,623.35 (plus interest) representing the balance due for the works completed by HTC.
- HTC subsequently attempted to enforce the adjudication award by way of summary judgment in court. WLP resisted enforcement on the basis that the JCT Sub-contract had been drafted for funding purposes only, had never been agreed as the basis of the works, had not been signed by the individuals and on the date as contended by HTC and therefore has never been formed i.e. brought into existence. During the enforcement proceedings, WLP put forward evidence that works were actually carried out under two entirely different contracts between the parties.

Key issues

The full judgment includes lots of interesting detail and discussion around the relevant case law and precedents, but in summary, key issues included the following:

1. Did the adjudicator have jurisdiction to decide the dispute if the specific JCT Sub-contract did not exist?
2. Did it matter/was it relevant if the JCT Sub-contract did not exist in circumstances where the alternative contracts pleaded by WLP would have resulted in a referral to an adjudicator using the same procedure?

3. By pleading alternative contracts on enforcement, which had not been raised or evidenced during the adjudication, was WLP raising a new jurisdictional argument?

What did the court decide?

The court addressed each of these points and commented as follows:

1. The existence of the JCT Sub-contract

Was the dispute about the existence of the JCT Subcontract a jurisdictional issue or a substantive issue? If it was jurisdictional, then it would go the heart of whether or not the adjudicator had the power to determinate the dispute, but if it was a substantive issue then it would be within the adjudicator's power to decide. The court distinguished between "a case where a contract is relied upon but is incorrectly identified in one or more respects, and a case where the contract relied upon never existed..."

The court held that in this case, this was a fundamental dispute as to the very existence of the contract. If WLP was correct, then the contract pursuant to which the adjudicator had been appointed did not exist and therefore the adjudicator could not have been correctly appointed and would have no jurisdiction to decide the dispute. In such a case the court noted that "Providing that the jurisdictional challenge has not been lost, if the defendant's argument in this respect has a real prospect of success, summary judgment is likely to be inappropriate."

WLP had disputed the existence of the contract during the adjudication and had not waived its rights in that regard. It had also provided substantially more evidence during the enforcement hearing to evidence its alternative arguments on contract formation. In the circumstances, the court found that there was a real prospect that at a full trial WLP could establish that the adjudicator was appointed pursuant to a contract which did not exist.

2. Was the existence of the JCT sub-contract relevant when WLP's alternative pleaded contractual arrangement would have resulted in a referral to an adjudicator using the same procedure as had already been used? I.e. did the answer to point 1 above really matter?

HTC argued that in circumstances where the alternative contracts relied upon by WLP were in any event also construction contracts capable of giving the same adjudicator jurisdiction to decide the same dispute under the same procedure, the dispute about the existence of the particular JCT Sub-contract itself did not undermine the adjudicator's jurisdiction.

However, the court did not agree. The court held that there must be a "foundational" contract in existence pursuant to which the adjudicator was properly appointed. Variations or changes or the precise terms of that contract could then be a substantive issue for the adjudicator to decide. But only if the adjudicator had been correctly appointed in the first place. That was not the case here, despite the fact that the contractual arrangements contended included the same adjudication procedures. If the JCT Sub-contract pursuant to which the adjudicator had been appointed did not exist, that would be fatal to the adjudicator's jurisdiction.

3. By advancing an alternative contractual argument during the enforcement proceedings which had not been put before the adjudicator, was WLP relying on a new or different argument in respect of jurisdiction?

During the adjudication WLP had simply put forward a position that the JCT Sub-contract did not exist. However, during the enforcement proceedings, WLP argued and put forward evidence that the works had been carried out under two different contracts (neither of which was the JCT Sub-contract). This was an important point, because the authorities are clear that relying on a new jurisdictional argument on enforcement (that was not raised during the adjudication) is not permissible.

The court held that if WLP's argument was that the adjudicator lacked jurisdiction because the correct contractual position involved more than one construction contract, that would be a new argument (not put before the adjudicator) which could not form the basis for arguing against enforcement at this stage. However, despite the new evidence put forward by WLP during enforcement proceedings, WLP's argument essentially remained that the JCT Sub-contract did not exist. That was a point which was squarely put before the adjudicator and against which WLP had not waived its rights. Therefore, the court found that this was not a new or different argument in respect of jurisdiction to that which had been raised during the adjudication and WLP was entitled to raise this as a jurisdictional challenge against enforcement.

In the light of the above, summary judgement to enforce the adjudicator's decision was refused. Given the court's decision on these points, the court also did not then need to consider the allegations of fraud and misrepresentation made by WLP against HTC in relation to the JCT Sub-contract.

Key takeaways

This case highlights the difficulties which can arise where a formal contract is not agreed and signed by both parties prior to the commencement of construction works. In this case it was not the content of the contract, but rather the existence of the contract that was the key issue. This made the adjudication procedure uncertain and left the notifying party open to a jurisdictional challenge on enforcement, ultimately meaning that it was unable to recover c.£2m of unpaid sums awarded to it by the adjudicator.

So, however urgent the works may be, the clear lesson is that that parties should endeavour to put a formal agreed signed contract in place sooner rather than later, as this will give certainty of both the substantive terms and prevent arguments about the basis of an adjudicator's appointment in the event of a future dispute.

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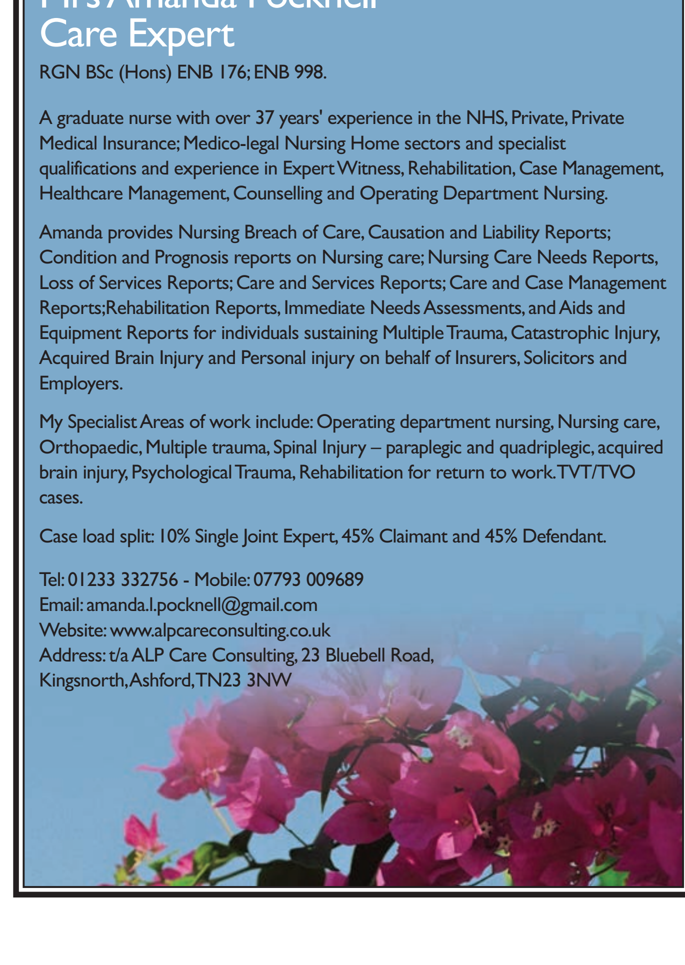

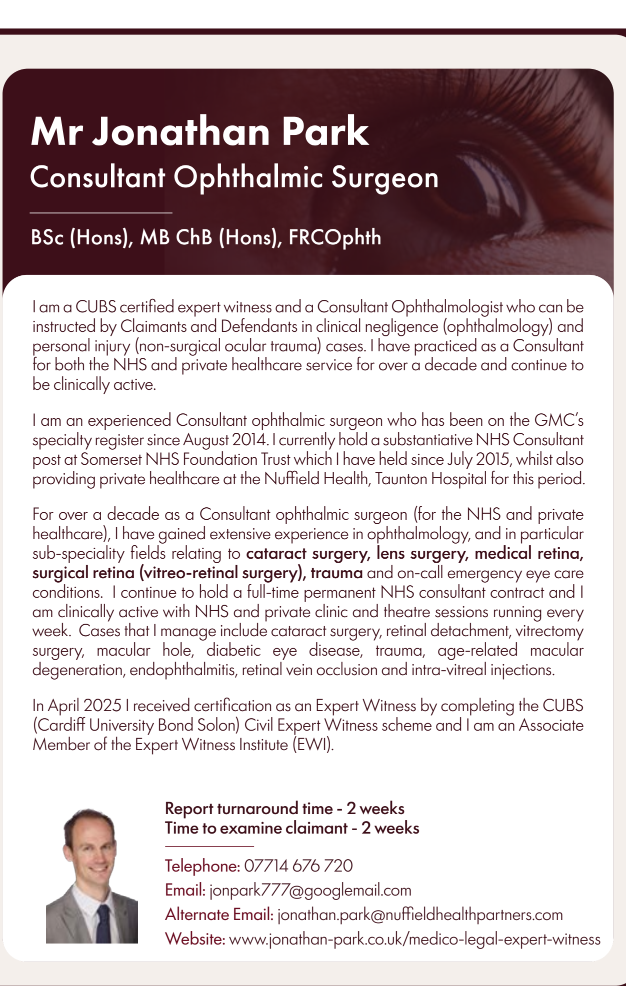

Parent Company Liability post-Vedanta

by Jon Gale, Philip Linton, Patners & Chloe Meredith, Senior Expertise Lawyer at Ashurst.

1. Introduction

Since the UK Supreme Court's landmark 2019 judgment in *Vedanta* [2019] UKSC 20, there has been a steady stream of high-profile cases concerning parent company liability for the actions of overseas subsidiaries. This summary distils key themes from recent case law and suggests ways organisations can mitigate the risk of inadvertent parent company liability for the acts of subsidiaries.

2. What happened in Vedanta?

In *Vedanta*, a group of Zambian citizens brought negligence and breach of statutory duty claims against a UK mining company and its Zambian subsidiary over toxic emissions from the Nchanga copper mine. The defendants challenged the English court's jurisdiction and a central question was whether there was evidence that the UK parent company had assumed a duty of care towards the claimants. Although this was a question of Zambian law, the Supreme Court noted that Zambian negligence law is closely aligned with English law and turns on factual issues.

In rejecting the defendants' jurisdiction challenge, the Supreme Court clarified that parent company liability in negligence is not a distinct or novel concept, but depends on whether a duty of care arises between the parent and those harmed by the subsidiary's actions. The existence of a parental duty is a "pure question of fact", primarily determined by the degree of the parent's intervention or assumption of responsibility for the subsidiary's operations – whether by controlling, supervising, advising management, or publicly holding itself out as doing so. In this case, there were indicators that the parent company had assumed such responsibility. In particular, a sustainability report highlighted the parent company's oversight. It said that the parent company had established group-wide environmental and sustainability standards, rolled them out through training and monitored compliance. The case settled out of court in 2021.

3. Developments post-Vedanta

Key themes from subsequent cases include:

- **The importance of corporate operations and documents:** *In Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3 the Supreme Court emphasised that the parental duty is not automatic and requires a granular, fact-sensitive analysis and review of the available materials. The court reaffirmed that internal corporate documents are fundamental to establishing parental oversight and intervention. Evidence considered included groupwide control frameworks, employee witness statements concerning day-to-day operations, organisational structure, the actual conduct of the parent company, and public representations indicating an assumption of responsibility (e.g. in sustainability reports).

  Similarly, in *Município de Mariana and others v BHP Group (UK) Ltd (formerly BHP Group plc) and another* [2025] EWHC 3001 TCC the court considered the subsidiary's corporate governance (finding that BHP controlled board appointments) and had recourse to extensive disclosure in assessing BHP's control over its subsidiary. The court referred to spreadsheets sent by BHP to its subsidiary which set out *"deadlines for deliverables on topics such as costs, cash flow, planning, production, projects, risk and critical incidents"* and financial and technical audits, the findings of which were reported to BHP.

- Group actions: Many claims post-Vedanta are group claims. For example:
  - (i) ***Jalla v Royal Dutch Shell Plc*** [2023] UKSC 16 was a representative action brought on behalf of more than 27,000 individuals allegedly impacted by the 2011 Bonga oil spill off the coast of Nigeria. The Supreme Court ultimately concluded that as the spill was a one off event rather than a continuing nuisance, the claim was time-barred as a matter of Nigerian law.

- (ii) ***Okpabi*** concerns two sets of proceedings. The Ogale proceedings, where the claimants are a Nigerian farming and fishing community of ~40,000, and the Bille proceedings, where the claimants are 2,335 individuals living in a remote riverine community in Nigeria. The claim is ongoing after a preliminary issues hearing on Nigerian law, judgment on which was handed down in June 2025.
- (iii) ***Limbu v Dyson Technology Ltd*** [2024] EWCA Civ 1564 is a claim on behalf of Nepalese and Bangladeshi migrant workers who allege that they were trafficked to Malaysia and subjected to exploitative and abusive living and working conditions. The claim is ongoing, with a liability trial expected to take place in April 2027.
- (iv) ***Catarina Oliveira Da Silva v Brazil Iron Ltd*** [2025] EWHC 606 (KB) involves 103 claimants who were residents of communities in Brazil allegedly impacted by unlawful pollution from the Fazenda Mocó iron ore mine. Notably, this group claim is not brought in respect of the Brazilian company that operated the mine; but instead against its two English-domiciled owners, with the second defendant being a wholly-owned subsidiary of the first. The claimants allege that both assumed "control and direction" over the Brazilian mine operator. The claim is continuing after the Court of Appeal refused the defendants' application for permission to appeal the High Court's finding that the English courts have jurisdiction to hear the claims.
- (v) ***Município de Mariana*** is thought to be the largest group claim in England to-date and concerns claims brought on behalf of 600,000+ individuals impacted by the 2015 Fundão Dam disaster. The High Court initially struck out the claim, deeming it "irredeemably unmanageable"; however the Court of Appeal has allowed it to proceed, emphasising the wide range of case management tools available to the court. The High Court handed down its judgment in November 2025 (our article on the judgment is accessible here).

- **"Piggyback" jurisdiction:** Many of the claimants have adopted the strategy successfully deployed by the claimants in *Vedanta* to ensure that their claims are heard by the English courts, despite appearing to be more closely connected to another jurisdiction. The claimants commence proceedings in the English courts and serve the proceedings on the UK domiciled parent as of right. They are then able to obtain the court's permission to serve on the overseas subsidiary out of the jurisdiction on the basis that the subsidiary is a "necessary and proper party" to the proceedings.

  Unsurprisingly, this has resulted in jurisdiction challenges. However, in most cases the English courts have found in favour of retaining jurisdiction (see: *Okpabi, Mariana; Limbu v Dyson Technology Ltd; Catarina Oliveira Da Silva v Brazil Iron Ltd*), notwithstanding recognising that England and Wales was not the most natural forum for the dispute.

  We anticipate that claimants could also validly serve proceedings on a non-English parent company with a "place of business" in England and Wales, before using the "necessary and proper party" gateway to join the overseas subsidiary to the proceedings. Whether a company is deemed to have a "place of business" in the jurisdiction depends on the facts in each case and the adoption of such a strategy would likely result in challenges to the jurisdiction of the English courts.
- **Access to justice:** In each of *Okpabi, Mariana, Limbu v Dyson Technology Ltd, and Catarina Oliveira Da Silva v Brazil Iron Ltd*, the English courts accepted jurisdiction on the basis that there was a real risk of substantial justice not being achieved if the claims were to proceed in the jurisdictions of the overseas subsidiaries. Crucially, these claims involved claimants with little means and no access to funding arrangements which would be available to them in the UK. As explained by the Court of Appeal in Limbu, *"if the defendants can be expected to have the very high standard of legal service in Malaysia which their resources permit, but the claimants only a lesser standard, whereas in England the claimants will also be represented by experienced and well resourced solicitors...that is a factor... which favours England as a more appropriate forum"*.
- **The English courts can assess parent company liability, irrespective of governing law:** As emphasised by the Supreme Court in *Vedanta* and *Okpabi*, the existence of a parental duty is often a "pure question of fact" and the English courts are able to make an assessment irrespective of the law governing the dispute. By way of illustration, *Vedanta* was governed by Zambian law, *Okpabi* by Nigerian law and *Mariana* by Brazilian law.
- **Continuation of ESG related harm claims:** Increasingly, large claims against parent companies in relation to wrongdoing by their overseas subsidiaries have ESG related causes of action, in particular socio-environmental damage, and human rights violations. We expect claims against parent companies of this nature to become increasingly common.

4. Key Takeaways

- **Re-evaluate group relationships:** Parent companies should decide, deliberately, how their corporate group is governed. Some will prioritise minimising the risk of being held liable for subsidiaries' acts by limiting day-to-day intervention, while others will opt for stronger oversight and control to prevent negligence in the first place. Whatever approach is chosen, it should be a conscious policy applied consistently across the group.
- **Audit and maintain robust policies and procedures:** After deciding how the group will be governed, audit existing policies and procedures to ensure they reflect how the group operates (or will operate going forwards). Regularly review and update these documents. The extent of a parent company's oversight and involvement in the operations of its subsidiaries is a key consideration for the court when assessing parent company liability. The group's policies and procedures on delegation, responsibilities and reporting lines will be important evidence.
- **Careful drafting of public-facing materials:** Public facing documents such as annual reports, sustainability reports and financial statements should be carefully drafted. A parent company should not hold itself out as having a greater degree of control over its subsidiaries than it actually has.
- **Consider insurance:** Where possible, ensure that insurance covers tortious liability, cross-border litigation risks and the acts of subsidiaries.
- **Prevention:** In circumstances where a parent company opts for oversight and control over its subsidiaries' affairs such that the parent company could be held liable for a subsidiary's actions, identify and address risks related to subsidiaries early, and support subsidiaries in managing ongoing risks.
- **Stay ahead:** Keep abreast of legal, regulatory and industry guidelines and developments and revise practices as necessary.

5. Conclusion

The English courts are receptive to claims against UK-domiciled parent companies for subsidiaries' wrongdoing, especially ESG-focused group actions with access to justice concerns. In most of the cases mentioned above, proceedings are ongoing. We can therefore expect further guidance from the courts on parent company liability in due course.

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Mr Mark Hinnells

Climate Change Expert

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Fiduciary Duty – challenges as to whether Trustees or Directors have met their Fiduciary Duty in considering ESG, environment or climate change in investment decisions and risk management. Mark has a particular interest in pensions and other funds in multiple jurisdictions.

Greenwashing – assembling a case against a claim, or defending the accuracy of claims made by, financial institutions retailers or producers.

Challenges to Government policy – including under the Climate Change Act, carbon budgets, policy impact assessments, efficacy, proportionality, cost etc

Human rights and climate change – including where rights are claimed to have been infringed through lack of appropriate action.

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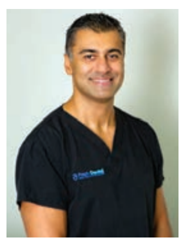

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Mr Nabili regularly updates his skills through national and international meetings and has contributed to several peer-reviewed publications and conference presentations. He was appointed Honorary Senior Clinical Lecturer at UCLAN in 2023. He also serves as Clinical Lead in Ophthalmology at The Lancaster Private Hospital, Audit Lead, and Cataract Pathway Lead at Morecambe Bay NHS Trust.

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Dr Good is suitably qualified to provide expert opinions on all aspects of brain and spinal neuroimaging. Including: all aspects of diagnostic brain and spine imaging, brain and spinal trauma, brain haemorrhage and stroke, neurodegeneration including dementia, movement disorders, skull base, orbital and ENT imaging, TMJ imaging and Peripheral nerve imaging.

Dr Good has been undertaking medicolegal work for the past 20 years and is a vetted expert for Academy of Experts, Faculty of Experts and APIL (1st tier) She has also obtained the Cardiff University CUBS qualification.

Cases include personal injury, clinical negligence, criminal cases and GMC and Irish Medical Council fitness to practice proceedings. She undertakes both Claimant and Defendant work, has civil court experience including: Howe v Taunton & Somerset (for defence) 2017, ZZZ v Yeovil (for defence) 2019, Flanaghan v Plymouth (for defence) 2019. and Saber v YDH (for Defence) 2022. Dr Good also has hot tubbing experience and has been instructed as a Single Joint expert. She undertakes adult cases only and does not take on any paediatric cases..

Dr Good has attended Coroner's Court on four occasions and an Irish Medical Council hearing. Medical Report turnaround time is usually 2 -3 weeks but she can provide reports in 5 working days in urgent situations. Dr Good can also supply Screening Reports.

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A cautionary tale on evidence

by Andrew Fremlin-Key, Partner & Millie Dickson, Trainee, in the Media and Reputation team at Withers LLP.

Introduction

The usual risks of defamation litigation are well known: costs, adverse publicity, time-consuming and the inherent unpredictability of trial. Claimants accept these risks for the potential benefits of correcting the record, deterring future wrongdoing and vindicating their reputation.

But one risk is often overlooked: the danger of a judgment publicly branding a party (or witness) as dishonest or unreliable. For many Claimants, this can be more damaging long-term than losing the case itself. A finding that a litigant has lied or given unreliable evidence can follow them for years.

The August 2025 judgment in Noel Clarke v Guardian News and Media Ltd illustrates some of these risks starkly. Clarke brought a £70 million libel claim over articles alleging sexual misconduct. Despite his repeated denials, the Court found some of the allegations substantially true and the reporting in the public interest.

More damaging still was the judge found he was 'not a credible or reliable witness', that he had 'lied' to the court, and that he only admitted matters forced upon him by documents he had 'carefully studied' – and then only to the minimum degree possible. Defamation proceedings can be appropriately brought to protect and restore reputation. However, if ill-advised, they can lead to a judgment that highlights many of the concerns which the Claimant sought to dispel by bringing the claim.

Unreliable witnesses: a recurring trend

This is not the first time in recent years where a Claimant has found themselves with unhelpful findings in a Judgment on top of losing the case. In Hegab v Spectator (1828) Ltd[1], the judge was 'satisfied that he [the Claimant] had lied... with the consequence that his evidence, overall, is worthless'.

More notably, in the Vardy v Rooney case, the judge found that 'significant parts' of Vardy's evidence was said to be 'not credible'. Having been dubbed 'Wagatha Christie', this case garnered a lot of media attention, where pieces of Vardy's witness evidence went viral. Despite the damaging judgment on Vardy being delivered nearly four years ago, it is hard to think of Vardy and not to think of the libel case. [2022] EWHC 2017 (QB) [6]

Hay v Cresswell was a more extreme example which involved a libel claim brought against an individual who had made allegations of sexual assault against the Claimant. Not only was the Claimant's case unsuccessful, but the findings included his evidence being 'unsatisfactory' and 'less than credible'. Worse still, the judge concluded 'In light of the cumulative effect of these concerns I am unable to attach significant weight to the Claimant's denial that he was the perpetrator of the sexual assault and indeed the unsatisfactory evidence that I have highlighted affords further support for the contrary proposition. [...] I am satisfied that she [the Defendant] has established on a balance of probabilities that she was subjected to a violent sexual assault by the Claimant in the early hours'. This is despite the fact that no police action was taken at the time it was reported – the Claimant was never arrested – let alone charged or convicted. Nevertheless, judges appear to be increasingly willing to make such findings if the evidence permits them to do so. [2023]EWHC 882 (KB) [193, 197]

There may also be cases where the distinction between unreliable and dishonest evidence is key. For example, in the case of Brint v Barking, Havering and Redbridge University Hospitals NHS

Trust[2], while the judge found that the Claimant's evidence had been "unconvincing and unreliable"[3], she had not been fundamentally dishonest as she had genuinely believed in the truth of her evidence. A similar assertion was made in Tosh v Gupta[4], where the judge found that the Claimant was an "honest person" despite the fact that they were also, in the words of the judge, an "unreliable historian"[5] when recalling the events at the heart of the claim. Both of these claims ultimately failed on the issues of liability, but the Claimants walked away with judgments affirming that they had been honest throughout the litigation.

The impact of credibility on damages

In the event that the litigation is successful in spite of poor witness evidence, the credibility of the witness, or lack thereof, can significantly impact the damages the Court decides to award. In Wright v McCormack[6], the Claimant's award of damages was reduced to nominal damages on the basis that the Claimant had originally given deliberately false evidence exaggerating the seriousness of harm caused.

Key lessons

To avoid similar pitfalls, Claimants and their legal teams must carefully interrogate their own case, and indeed the witnesses they intend to put on the stand, before stepping into court to assess any potential danger areas or lacunas. This includes:

Challenging the credibility of their own evidence

Legal teams must rigorously examine the Claimant's account and assess consistency across the various witness statements if there are multiple witnesses. Witnesses must be prepared to withstand scrutiny and questioning, especially in high-profile cases, without seeming overly defensive or evasive.

Comprehensive document review

Every document – emails, texts, social media posts, photographs, flight records, calendar entries - must be reviewed carefully by the legal teams for potential contradictions to the Claimant's case. Overlooking even what appear to be minor details can undermine credibility.

Strategic litigation planning

Before filing a claim, the Claimant should consider whether the litigation itself might, in fact, amplify reputational harm (the Streisand Effect) and whether the potential benefits are worth the risks. In some cases, a trial can give further visibility to the allegations and ultimately will be seen by many as validating many of the claims against him regardless of the result.

Conclusion

Bringing a public claim involves many significant risks. Claimants must ensure their case is watertight, that their account and in particular that of their witnesses are credible and truthful and that they know where any weaknesses lie. Otherwise, they may find the future consequences are more severe than simply being hit in the pocket.

References

[1] [2025] EWHC 2043 (KB)

[2] [2021] EWHC 290 (QB)

[3] Ibid, [9]

[4] [2025] EWHC 2025 (KB)

[5] [2025] EWHC 2025 (KB) [27]

[6] [2023] EWCA Civ 892

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Van Oord v Allseas: A Decade On and Still a Warning For Quantum Experts

by Paul McArd, Managing Director at Accura Consulting.

It is now more than ten years since Van Oord UK Ltd v Allseas UK Ltd was decided, but I still see the same mistakes the court exposed in that case appearing in quantum reports today.

The judgment matters because the court did not merely criticise an expert's approach. It rejected the claimant's quantum evidence in full and explained, step by step, why it could not be relied upon. Those reasons remain directly relevant to any quantity surveyor acting as an expert witness.

Looking back, the case reads like a checklist of what goes wrong when experts drift away from their proper role.

What Went Wrong?

The expert accepted the claim instead of analysing it

The court found that the quantum expert took the claimant's pleaded case at face value. He did not test it against the contemporaneous records that supported or undermined it. Rates were adopted because they were said to have been agreed elsewhere, not because they had been independently assessed (para 81).

From an expert perspective, that is the first mistake. Once you start with the claim rather than the evidence, everything that follows is compromised.

Only one side of the evidence was considered

The judge was clearly troubled by the fact that the expert prepared his report by reviewing only the claimant's witness statements. He did not engage with the opposing evidence at all. In some instances, disputed assertions were lifted directly into the report as if they were established facts (para 82).

At that point, independence has already been lost. An expert cannot assist the court if they only look in one direction.

Assumptions were hidden rather than tested

The expert valued the claim on one basis only, namely the claimant's full case. He refused to provide alternative valuations based on different factual assumptions, despite encouragement from the court to do so. When key assumptions failed under cross examination, the valuation collapsed because there were no alternative figures (para 83).

In my experience, this is one of the most common and most avoidable errors. Courts are not asking experts to predict outcomes. They are asking them to show consequences.

Actual loss was never addressed

One of the most telling criticisms was that the expert never tested the claim against actual cost. He did not ask whether any real loss had been suffered at all. The judge said this created the impression that the claim was a try on rather than a compensatory exercise (para 84).

Whatever the contractual mechanism, actual cost remains a critical sense check. Ignoring it weakens credibility immediately.

The evidence unravelled under cross examination

As cross examination progressed, the expert conceded error after error, many of which had already been identified by the opposing expert months earlier. Eventually he accepted that he was not happy with any of his reports. The judge said that once an expert disowns their own work, the court cannot sensibly rely on it (paras 85 to 86).

That moment ended the evidence. Once confidence is lost, it is not recovered.

The schedules were not truly the expert's work

The court was also critical of schedules appended to the report that the expert had not prepared and had

not properly checked. Some had been produced by the claimant or its consultants, yet were presented as if they were the expert's own work. Authorship and verification were blurred (paras 88 to 90).

As an expert, if I cannot stand behind a schedule as my own checked work, it should not be in my report.

Expert opinion was used to patch a weak factual case

Perhaps the most serious criticism was that new assertions appeared in expert materials after factual witnesses had already failed under cross examination. Those assertions were drawn from discussions with those same witnesses. The judge described this as a subterfuge and the opposite of independent expert conduct (paras 89 to 90).

An expert is not there to repair a failing factual case. Once that line is crossed, the evidence is finished.

There was no sense check against reasonableness

Finally, the expert never tested the claimed figures against fair and reasonable rates, even as a cross check. The judge said that omission alone rendered the valuation exercise of no value (para 92).

If the numbers do not pass a basic reasonableness test, the court will not trust them.

What should have happened instead

With the benefit of hindsight, the correct approach is clear.

The expert should have started with the documents, not the claim. Both sides' evidence should have been reviewed, with disputed facts clearly identified rather than assumed.

Assumptions should have been exposed and tested. Alternative valuations should have been provided so the court could see how the numbers changed depending on its findings.

Actual cost should have been analysed, even if it was not the contractual measure. It remains the best sense check on whether loss has genuinely been suffered.

Every schedule included should have been demonstrably the expert's own work, fully checked and understood.

Most importantly, the expert should have been willing to say when parts of the claim could not be supported. That may reduce the headline figure, but it preserves credibility.

The lesson that still matters

More than a decade on, Van Oord v Allseas remains a warning because the mistakes it exposed are still familiar.

Courts do not want advocates in expert clothing. They want independent analysis that helps them decide what loss, if any, has been proven.

When experts forget that, the court does not trim their evidence back.

It disregards it entirely.

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www.accuraconsulting.com/news-and-insights/a-decade-on-from-van-oord-v-allseas

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The Examination of Damage to Textiles in Forensic Investigations

by Forensic Access.

Textiles are part of almost every aspect of daily life, and as such they often become silent witnesses to violent events. Yet textile damage analysis is sometimes underestimated in comparison to higher profile evidence types such as DNA.

From a seam torn during a struggle to a stab cut in a hoodie or heat damage generated during an act of arson, damaged fabrics can hold crucial information about the actions which have taken place, the implements used and the sequence in which events unfolded. Fabrics record events in a way that can be highly revealing when examined with care, experience and an understanding of how materials behave.

The aim of this article is to give an overview of how textile damage examinations are conducted and why they remain a powerful tool in reconstructing events across a wide range of criminal cases.

What does a textile damage examination involve?

The applications of textile damage analysis are far broader than simply inspecting clothing for cuts, tears or holes. Although clothing is the most common exhibit to be submitted for this type of examination, any textile can be examined. This includes bedding, curtains, upholstery, vehicle interiors or any object where woven, knitted or felted materials form all or part of its structure.

In any textile damage examination, the first question which needs to be addressed is usually straightforward: 'Is there damage present and, if so, is it relevant to the case?' Once relevant damage has been identified, the work falls into three main areas:

1. Determining the mechanism and recency of damage

A central aim is to understand what caused the damage. For example, was the fabric cut by a knife, torn by force, abraded by friction or punctured by an implement? Many cases depend on whether the damage is compatible with the account given by an individual. For example, is a garment torn in a way that fits with a struggle, or does it display features strongly suggestive of cutting with a sharp blade?

Another important concept is 'recency'. In the context of examining textile damage the term 'recent' does not refer to a precise time window but indicates that the garment has not been washed or

worn extensively since the damage occurred. This is because washing, prolonged wear or environmental exposure can soften, distort or obscure the fine features generated at the time the damage was caused. Establishing recency helps determine whether the damage is likely to be associated with the incident under investigation.

2. Comparing damage with potential causative implements

In many cases, investigators want to know whether a particular weapon or object could have caused the observed textile damage. This often involves knives but may also include machetes, scissors, screwdrivers, axes, hammers or improvised items. Even household objects can generate distinct textile signatures.

Scientists may also be asked whether the damage is more likely to be generated by a stabbing action rather than a slashing action, or whether multiple cuts represent multiple actions. The complexity increases when folds and layering of clothing, and movement of the wearer are considered. Clothing rarely sits flat during an assault. Items can bunch, twist or lift as a person moves in response to threat or pain, and this can influence the appearance of the resulting damage.

3. Physical Fit Examinations

Sometimes the question is whether two pieces of fabric once formed part of the same garment or item. This is known as a physical fit or jigsaw fit examination. Although occasionally the pieces can be aligned perfectly, it is often more complex. Missing sections, distortion and incomplete edges require additional comparisons of fabric type, weave, colour, stitching patterns and overall wear.
A physical fit can provide exceptionally strong evidence that two items once belonged together and may support or refute an account offered by a suspect or victim.

Typical Case Types

Textile damage analysis appears across a wide range of investigations:

Violent Assaults and Homicides

Damage to clothing can help answer questions about the number and direction of stabbing or slashing actions, whether a weapon may have been used, or whether the pattern of damage is consistent with defensive movements such as raising the arms.

Sexual Offences

Where consent is disputed, damage to underwear or clothing may be one of the few features capable of supporting or challenging accounts. Recently torn seams or ripped fabric can be highly significant.

Kidnappings

Textile comparison can assist in the examination of ligatures, bindings or gags, including whether torn fabric used to restrain someone matches materials recovered elsewhere.

Burglaries

Fragments of fabric can be found at points of entry, on barbed wire, broken glass or protruding nails, allowing comparisons to any suspect's clothing.

Road Traffic Collisions

Abrasions to clothing may help determine contact with the road surface, whether a person was dragged or was under a moving vehicle, and in what orientation.

Arson and Thermal Damage

Fabrics show characteristic patterns when exposed to heat or flame. Even microscopic features, known as flash damage, can be important in cases involving accelerants or incendiary devices, allowing an evaluation of a wearers proximity to the events being investigated.

Ballistic Damage

Entry and exit holes, often coupled with associated soot or residues, can provide vital information. Forensic firearms specialists can recreate ballistic damage under controlled conditions to support interpretation.

Corrosive Substance Attacks

Different fibre types respond differently to acids, alkalis and oxidising agents which can cause distinctive chemical degradation to fibres.

Understanding Common Types of Damage

General Wear and Tear

Recognising normal wear helps distinguish evidential damage from everyday deterioration. Areas subject to heavy wear such as elbows, hems or inside pockets may naturally unravel, fray or thin. Modern fashion trends can complicate matters because some garments are manufactured with intentional distressing.

Cuts

Cuts are among the most common and important forms of textile damage. Their features depend on the sharpness of the implement, the type of fabric and the dynamics of the cutting action. A sharp blade typically produces cleanly severed fibres aligned in a single plane. In contrast, blunt knives may distort or tear fibres before slicing them. Similarly, a smooth-edged blade will tend to produce much neater damage features than a serrated blade. It is

also necessary to consider whether a single stabbing action through folded fabric could generate multiple stab holes. Scissor damage may display distinctive features allowing it to be confidently distinguished from damage caused by a single bladed instrument.

Tears

Tears tend to follow the weave or knit of the fabric, with the yarns and fibres parting along the line of least resistance. Torn areas usually display a chaotic arrangement of fibre ends that vary in length sometimes with associated distortion in the surrounding fabric. Most textiles are surprisingly difficult to tear with bare hands and seam separation is often more common than true tearing of the fabric.

Punctures

Puncture damage is generated when objects force yarns and fibres apart penetrating through a layer of fabric. The surrounding fabric often shows stretching and distortion. The shape of the resulting hole can sometimes help to identify the type of implement.

Abrasions

Abrasive damage ranges from superficial disturbance of the fabric surface to deep, penetrating frictional wear. Directionality can sometimes be established from the pattern of displaced fibres.

Thermal Damage

Synthetic fibres melt when exposed to high heat, while natural fibres char. Mixed-fibre garments display different responses depending on composition.

How Forensic Scientists Examine Textile Damage

The process begins with a detailed visual inspection under good lighting. A low power microscope is then used to examine the characteristics of the edges and fibre ends of any damaged area. Photographs and measurements are taken, and critical findings are reviewed independently by a second scientist.

Reconstruction Experiments

Where appropriate, reconstruction tests are carried out. Scientists may attempt to reproduce damage on a garment itself in an area away from evidential features or on similar fabrics. When permitted, the questioned implement such as a knife may be used. If not, an implement of comparable shape and sharpness will be obtained.

Variables such as blade angle, penetration depth, fabric tension and velocity are controlled and adjusted to see whether similar damage can be produced. This helps determine how the original damage may have occurred.

Comparison with the findings of a pathologist can also be crucial. Damage to clothing does not always match the number or appearance of wounds on the body, particularly when loose clothing moves during an assault.

Limitations

Textile damage examination has inherent limitations, and these must be acknowledged. In many cases, examiners can exclude an implement with confidence, but inclusion is usually more cautious. A scientist may conclude that a particular knife, or any other implement with similar characteristics, could have produced the damage.

Assessing the degree of force is rarely possible except in very general terms. Too many variables, including blade sharpness, fabric type and movement during the action, influence the appearance of the damage.

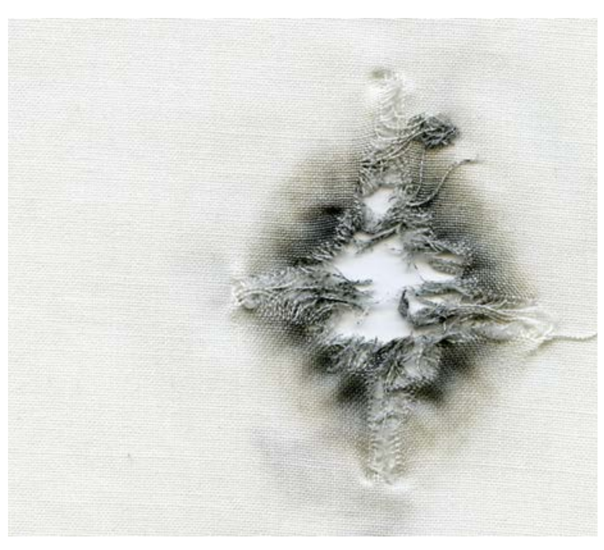
Case Study 1

Stab Damage and a Blunt Knife

A complainant suffered a single fatal stab wound to the lower abdomen. Witnesses described the defendant punching the complainant. A knife recovered from the defendant's home address was alleged to be the murder weapon. No blood or DNA linked either party to the knife.

Examination of the complainant's hooded top revealed a typical stab hole on the lower front right side, corresponding with the fatal wound. The knife proposed by the prosecution had notably blunt cutting edges and a rounded tip.

Reconstruction tests were carried out using this knife on an undamaged area of the same garment. Despite varying force, angle, fabric tension and stabbing speed, the test damage consistently showed significant distortion and tearing rather than the neat, cleanly severed fibres seen in the evidential stab hole.



These differences were clear and reproducible. Evaluating both prosecution and defence propositions, the scientific findings provided strong support for the view that the proposed knife was not the implement that caused the fatal stab damage.

Case Study 2

A Fabricated Defence

In another case involving a shooting and alleged assault, the defendant claimed the complainant had grabbed and ripped his hooded top during a struggle. A piece of matching fabric had been recovered separately. Although the two pieces formed a clear physical fit, closer examination revealed fine details inconsistent with simple tearing.

Microscopy identified some characteristics typical of being generated by an implement with a sharp edge, these included snippets of unattached yarn and parted yarns in a neat alignment. These features are typical of the use of scissors and support the view that at least some of the damage was initiated, and in some cases fully generated by a cutting action with scissors, and then possibly propagated by tearing. The features appeared recent and contradicted the defendant's account that the damage occurred during a physical struggle. The evidence supported the view that the damage had been deliberately created in an attempt to support a false claim of self-defence.

Conclusion

Textile damage analysis remains a vital but often overlooked aspect of forensic science. Fabrics record events in ways that can clarify or challenge accounts, identify the use of specific implements and provide insight into the dynamics of violent encounters. Although it cannot always deliver definitive answers, this discipline offers a powerful means of understanding what actions have occurred when clothing and textiles are damaged during criminal events.

Fashion and the nature of fabrics used in manufacturing may evolve and the implements used in the commission of crimes, including offences against people can change, but the fundamental principles of textile damage analysis remain constant. In a justice system that relies on robust, unbiased scientific evaluation, the careful examination of damaged textiles continues to play a crucial role.

If you require an expert report involving textile damage examination or any other forensic discipline, please contact our Casework Management Team by email: **science@forensic-access.co.uk**
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- Cauda Equina Syndrome
- Spinal infection, tumour, adult deformity and degenerative conditions
- Cervical, thoracic and lumbar reconstruction

Potential negligence and personal injury cases include all aspects of extra-dural spinal pathology including post-spinal intervention complications.

Mr Budd has medico-legal experience with over 500 spinal Medical Expert Reports completed (50% Claimant 50%Defence) between 2015-26.

Spinal sub-specialty only including claimant and defence work for Personal Injury and Medical Negligence.

Website: www.unitedspine.co.uk/#contact

Mr Nikhil Shah

Consultant Trauma and Orthopaedic Surgeon

FRCS(Tr & Orth), FRCS(Glasg), MCh(Orth), MS(Orth), DNB(Orth).

I provide medico legal reports in personal injury in various conditions - trips, slips, whiplash injury, hip surgery, complex pelvic acetabular fractures, long bone and articular fractures, ankle, lower limb injuries, hip/knee joint replacements, periprosthetic fractures, soft tissue injuries and LVI cases.

I also provide clinical negligence related reports in my specialist area of practice concerning hip and knee replacements, revision surgery, and trauma including pelvic-acetabular fractures.

Instructions from claimant/defendant solicitors or single joint expert approximately (ratio 45:45:10). I provide the regional tertiary service in pelvic-acetabular fractures.

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Ad hoc clinics in London

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Website: www.privatehealthcare.co.uk/privatespecialists/find-a-doctor/knee-surgeons/nikhil-shah

Mr Ajay Wilson

Consultant Oral and Maxillofacial Surgeon

BDS MFDS MBChB MRCS FRCS

Mr Ajay Wilson is a Consultant Oral and Maxillofacial Surgeon at Sunderland Royal Hospital. He completed medical and dental degrees, in addition to dental and surgical fellowships. Qualifying in dentistry in 2003 and spent three years in hospital practice in Manchester. Then completed basic surgical training in medicine and surgery and took up higher surgical training in OMFS in the Northwest of England. He is a Core Member Head and Neck cancer MDT and Extended Member Skin cancer MDT.

Mr Wilsons' specialist practice is oral cancer, head and neck cancer surgery with micro vascular free tissue reconstruction. He is a core member of the head and neck MDT and also offer sentinel lymph node biopsy service for oral cancer and head and neck melanoma.

Medico Legal Cases

- Personal injury Reports
- Clinical Negligence Reports
- Desktop Medical Reports
- Condition and Prognosis Reports
- Breach of Duty and Causation Reporting

Mr Wilson provides high-quality screening, advisory and full CPR Part 35 compliant reports. He currently accepts more than 50 Oral & Maxillofacial instructions per year. Mr Wilson can act on behalf of either Claimant or Defendant or as a Single Joint Expert with his current split being Claimant 60% - Defence 30% - Single Joint Expert 10%.

Mr Wilson is pleased to consider medical reports across the full spectrum of Oral and Maxillofacial Surgery. Terms & conditions, including costs, and time frames are available from my secretary.

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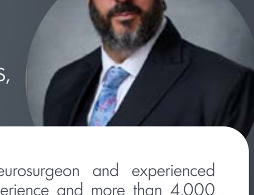
Mansoor Foroughi

Consultant Neurosurgeon

MB, ChB, FRCS (Lon.), MSc, FRCS (SN) FEBNS, EANS Braakman Diploma



Mr Mansoor Foroughi is a Consultant Neurosurgeon and experienced Medico-Legal expert with over 28 years' experience and more than 4,000 neurosurgical procedures performed. He is a recognised specialist in cerebrospinal fluid (CSF) disorders, including hydrocephalus, Chiari malformation, syringomyelia, arachnoid and colloid cysts, with extensive expertise in brain and spinal tumour surgery, neurovascular conditions, traumatic brain injury and degenerative disease of the spine.

Clinical and Medico-Legal interests include head injury and trauma (post-concussion syndrome, haematoma, traumatic brain injury), spinal disorders (cauda equina syndrome, cord compression, disc surgery, spinal injury), CSF disorders (hydrocephalus, Chiari malformation, syringomyelia, arachnoid cysts, colloid cysts, pineal lesions), brain tumours and neuro-oncology (including meningiomas), and vascular neurosurgery (brain haemorrhage and subarachnoid haemorrhage, aneurysms, AVM & dAV Fistula). His Medico-Legal practice includes active work since 2015, producing approximately 60–80 reports per year for both Claimant and Defendant, with instructions accepted across neurosurgical injury, trauma, brain and spinal disorders, and surgical complications.

Having trained in leading centres in the UK, Finland and Canada, Mr Foroughi has held Senior Consultant posts at Queen Elizabeth Hospital, Birmingham and in Brighton, Sussex and now works in full-time private practice in brain and spine surgery. He is widely published, contributes to neurosurgical textbooks, is an award-winning innovator and has a particular interest in the role of artificial intelligence in medicine.

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Police Use of Force – In Context

by Joanne Caffrey, Police Custody Expert Witness

In this article I consider the issues around police use of force. The police have a right to use force, but that does not mean it is the right thing to do. Likewise, some use of force may look excessive to a passerby but is totally justified. Here, I look at some of the practices and principles around use of force with detained persons. The starting principle is that all use of force is an assault unless it is justified as necessary, reasonable and proportionate for the lawful policing objective.

Police use of force must never be assessed purely as to whether or not the technique replicated the taught technicalities of the technique. Likewise, there is no list of 'illegal' techniques. I have been engaged for over 500 cases, and the majority of my work is concerning police practices with detained persons from the point of arrest and throughout the police custody detention. I work throughout the UK and have also been engaged for cases in Ireland, Isle of Man and Gibraltar. All policing areas follow comparable practices.

My main areas of work include:

- Deaths/injuries during police custody
- Use of force by police
- Drink and drug driving procedures
- Ligature deaths

Officers are taught approved techniques with the aim of those being used if any use of force is justified, but in times of necessity an officer can resort to any reasonable justified tactical option for the purpose of self-defence – whether trained or not.

I work within Criminal, Coroner/Fatal Accident Investigations, Public Inquiry and Gross Misconduct cases when police use of force is one of the central themes of the person's custody process. Custody begins from the point of initial contact, and I work with prosecution agencies[1] and Police Federation defence teams.

Any use of force by an officer should be the minimum amount of force necessary to accomplish the lawful policing objective and must be necessary, reasonable and proportionate in the circumstances of that particular incident, as that officer honestly believes them to be. It may ultimately be for a court/tribunal to decide if they believe the officer's account.

Use of force must never be viewed either solely as a technique or based upon the injury sustained. Perfectly performed techniques may still be unnecessary, disproportionate and unreasonable in the circumstance. A perfectly performed technique may also cause injury. An injury does not mean the technique was wrong or disproportionate, likewise the lack of injury does not mean the technique was necessary and proportionate.

It is always for the officer to justify any use of force based upon perceived threat and risk, alongside the use of the national decision-making model (NDM).

Impact factors, warning and danger signs must be considered. For example, the exact same words and behaviour can be demonstrated from an 80+ year old with limited mobility as a 30-year-old 6-foot-tall muscular trained ex-soldier. Capability and intent of the subject must always be considered, where possible. Both of these subjects can use the same words "I will kill you" with potentially different impacts on the officer. The 30-year-old subject is more likely to be considered a higher threat than the 80+ year old. However, both in possession of a knife could be considered a comparable threat for the weapon.

The officer's legitimate policing purpose must always be considered to ensure proportionality remains a central consideration. These factors have a crucial impact on the decision-making process and significantly, the time available to make those decisions and process 'pros and cons' for various tactical options. For example, is the officer's contact with the person one of a Criminal Justice arrest process or is it a safeguarding process for a person needing to be taken to a place of safety for their own protection, or a joint process?

'Neutralising the threat' would be forefront of most police officer minds. Police officers are taught to neutralise the threat and officers are often required to make dynamic decisions in minimal time. However, the use of force must never be the 'go to' first option when other less injurious tactical options were clearly available; likewise, an officer can make a pre-emptive strike without having to wait for the subject to attack them first.

Officers must be able to account for why they chose a particular course of action, and in some cases what other options may have been available and why these were not chosen. The National Decision-Making Model (NDM) and the THRIVE[2] assessment assists with this process. Length of service also assists the officer. I do find that those younger in service often tend to resort to the use of force quicker, partly due to that lack of operational experience to learn how to avoid the use of force.

A perfectly performed technique may still be unnecessary and unjustified, and/or not the least amount of force available. An untrained technique may be used which is considered necessary and justified in those circumstances at that time. All relevant information, and use of force response, must be considered in the circumstances. This includes staff actions/inactions from the moment a call for service is received as all staff decision making should be based upon threat, harm, risk, investigative response required, vulnerability and established initial engagement plan, alongside of the National Decision-Making Model (NDM). The control room staff have a significant role to play in this initial stage of the NDM as their passing of information commences the risk assessment process. The control room Inspector (Force Incident Manager) has a designated coordination role to perform for high level threat incidents such as weapons. The FIM is responsible for the initial police response and tactical plan. Sending officers to the scene 'ad hoc' is likely to carry more risk than coordinating the arrival of staff from an RV point with a joint tactical plan.

Officers need to work effectively as a team with the application of effective conflict management skills and use of the NDM to consider options and contingencies within dynamic and rapidly evolving incidents. Physical techniques for minimising injury is a core primary principle for officers, but it is for the officer to justify what they honestly believed were viable tactical options within the individual circumstances that were presenting, in order to achieve the desired lawful objective(s) with the minimal amount of force, minimising injury, whilst safeguarding the subject, themselves and the public.

Knives. If there is reason to believe that a subject may have a knife or other bladed weapon on them, the officer does not have to wait for the knife to be produced in order to consider this a possible high threat incident and a potential aggravated resistant subject. This is part of the NDM process and assessment of reasonable tactical options available to them.

Significant impact factors can be based upon the environment in which force is considered for use, for example whether it is in a public place or a secure custody unit. Currently the use of force within secure police custody units is a topical debate, and one which I want to focus upon in this article.

Prior to arrival at the secure custody unit, the person should have been searched but this does not provide definitive information that no weapon is concealed. A further standard search will be conducted at the unit as standard practice. Strip searches may also be justified in certain circumstances.

The police custody Expectations[3] state that "Any force used in custody is lawful, necessary and proportionate, used as a last resort and subject to robust accountability. It is carried out by trained staff using approved techniques." The indicators for this include:

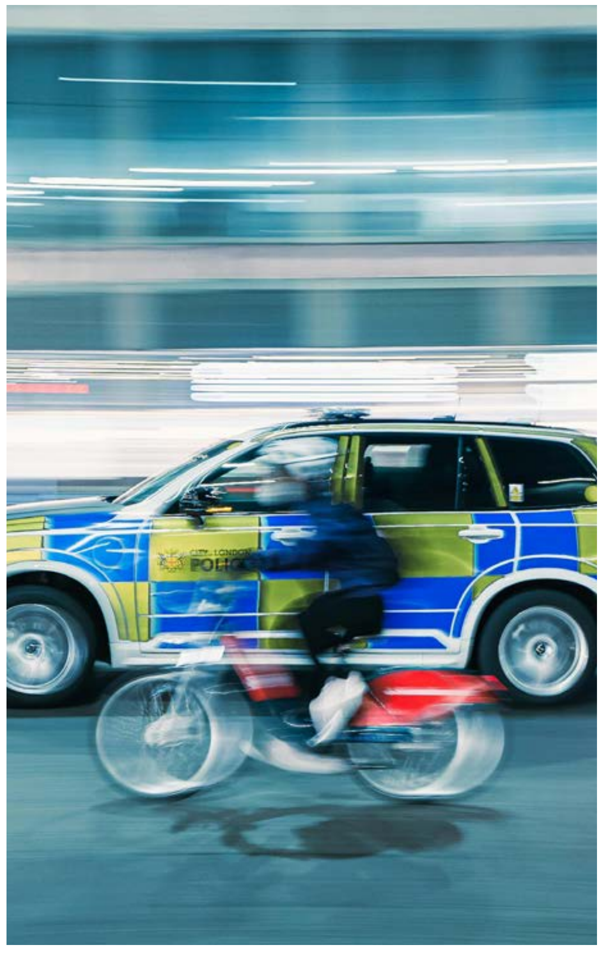
- "All staff are trained in de-escalation techniques and seek to avoid using force on detainees where possible, especially those who are children or vulnerable adults"

- “no more force and for no longer than is necessary and proportionate”
- “Force is avoided for the removal of clothing from detainees because of risks of self-harm. Other ways of managing these risks are considered and force is only used as a last resort. Use of force within custody suites, and the control and restraint equipment used, is documented within the individual custody record. A separate ‘use of force’ form is submitted by each officer/ staff member involved that clearly explains what happened and why force was used”
- “When force is used on detainees, their health needs are considered and they are examined by an appropriately qualified healthcare practitioner if necessary. Where a detainee asks to see a healthcare practitioner this is arranged promptly.”
- “Any use of force or restraint on a child should be a last resort, and take their age into account. When force other than compliant handcuffing is used, children are always examined promptly by an appropriately qualified healthcare practitioner”
- “Use of force incidents in custody are recorded accurately and reported into the governance structures. There are quality assurance arrangements to show that the force used was lawful and proportionate.”

Each police area custody provision is assessed against this criteria within every 7 years, and most forces within the UK are identified with issues concerning their use of force which include the lack of governance and oversight of use of force being inadequate, the lack of custody record entries justifying the use of force, the lack of use of force submissions, the lack of preserved digital evidence from the custody CCTV and officer body worn video (BWV); and force being used against detainees when other tactical options were readily available and not considered or attempted. The College of Policing states: “A custody office is a controlled environment and the overriding objectives should be to avoid using force in custody.” And “Custody officers should manage their environment so that situations where the use of force may be necessary are de-escalated.”

Digital footage retention. Police forces are typically now destroying digital footage from custody CCTV and BWV after 1 month. When I deal with a death in custody the footage is available as it has been immediately seized and preserved. The problem is typically for all other use of force cases. For example, a complaint is made for excessive use of force. Officers are served Gross Misconduct papers. The truth of what occurred is on that footage, which in many of my cases has now been destroyed. This makes it equally difficult for a detainee to demonstrate their case and for officers to defend themselves. One month retention is a significantly short period of time for any complainant, PSD or legal team to be aware of, prepared for, and seeking retention of the digital footage.

Use of force to remove clothing. I sometimes see ligature cutters being used in cells to remove clothing from detainees considered being at risk of self-harm, but not actively self-harming. Firstly, a ligature cutter is an emergency rescue device for ligature incidents and should not be used in these circumstances. It destroys clothing when alternative tactical options were possibly available. The custody expectations state that: “other ways of managing these risks are considered and force is only used as a last resort” such as level 3 or 4 observations regimes. The flip side of this point is I do sometimes see a detainee has been restrained on the cell floor and had their clothes torn from them on the justification they are a self-harm risk. This being the case they must be afforded a level 3 or 4 observation care plan as they are considered a heightened level of risk through self-harm/suicide. Level 3 and 4 mandate the involvement of the Healthcare Professional (HCP) for a clinical and forensic assessment which will include the mental health screening assessment and an appropriate adult assessment, as there are reasons to suspect the person is mentally vulnerable. What I often see is the detainee has their clothing torn from them and then they are placed on a level 1



Dr Girish Vaidya

A Consultant Child and Adolescent Psychiatrist with clinical experience over two continents since 1992. Experience and expertise in Child and Adolescent Psychiatry. Clinically works with complex presentations. Trusted by legal professionals to provide informative reports that helps the Court.

MRPsych, MD (Psychological Medicine), MSc (Healthcare Analytics and Artificial Intelligence), MSc (Healthcare Leadership)

I undertake medicolegal reports across the spectrum of conditions that involve and impact children and young people under the age of 18 years.

My experience and expertise lies in the assessment and management of neurodiverse conditions (ADHD/ASD) and their associated mental health comorbidities (anxiety disorder/depressive disorder). Since I work with families, I have developed an understanding of the bi-directional impact of the child's condition on parents' and vice-versa.

In the civil courts, I undertake assessments in cases of personal injury, medical negligence, institutional negligence amongst others. I also undertake assessments for regulatory bodies (GMC, HCPC) and in Coroners' Inquests. Finally, I undertake single joint expert assessments for family courts in Public Law Outline proceedings. My work is broadly equally split between claimant and defendants.

Those instructing have found it efficient to provide me with all healthcare (GP, CAMHS, Paediatrics) and educational records (EHCP, if appropriate). Virtual assessments have taken off since Covid. However, some assessments provide more 'rich' information in a face to face interview. I undertake the former and will let those instructing me know if the latter would be more beneficial to understand their case.

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Professor Stuart Winter

Consultant Otorhinolaryngologist, Head & Neck Surgeon

MD, MB CHB, BSC (HONS), MRCS, FRCS(ORL-HNS)

Professor Stuart Winter is a Consultant Ear Nose and Throat Surgeon with a clinical practice at the Oxford University NHS Foundation Trusts. He has over 25 years of expertise treating a wide range Ear, Nose and the Throat problems as well as Noise induced hearing loss. He has a special expertise in complex head and neck problems including cancer, neck trauma, neck lumps, throat problems, swallowing and voice change.

He has undertaken work in clinical negligence, personal injury and noise induced hearing loss and he certanly appreciates the requirements of solicitors instructing on expert witness statements.

Areas of expertise include:

Ear, Nose & Throat Problems

- General ENT problems
- Noise Induced Hearing loss
- Tinnitus
- Nasal conditions and surgery
- Sinus problems

Road traffic injuries causing ENT problems

Head & Neck Surgery and Oncology

- Head & Neck Cancer (including salivary, larynx & pharynx cancers)
- Voice disorders
- Swallowing disorders
- Breathing Disorders (of throat).

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SW

Mr. Damian Lake

Consultant Ophthalmologist

MB,Ch.B,FRCOphth,FRSM,LLM

Mr. Lake is a Consultant Ophthalmologist currently practising in Kent, Sussex and London.

In 2008 Mr. Lake became a Consultant at the Queen Victoria NHS hospital, East Grinstead. He became Clinical Director of the service for five years, and responsible for the UK's first Eye Bank.

Mr. Lake has represented the hospital at National level at OTAG (Ocular Tissue Advisory Group to NHSBT) and as Chair of the OTTSG (Ocular Tissue and transplant Standards Group of the Royal College of Ophthalmology.)

In 2022, Mr. Lake obtained a Masters degree (with merit) in Law from The University of Cardiff.

In 2023, Mr. Lake founded The Sight Centre Group and opened clinics and hospitals in Tunbridge Wells, Kent, dedicated to excellence in eye care. He continues as the Medical Director and a practising Consultant.

Mr. Lake has produced medico legal reports since 2008, with an approximate 50:50 split, Defendant: Claimant ratio, including joint cases and overseas cases.

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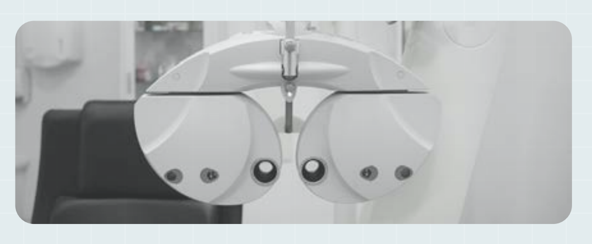

Dr. Arumugam Moorthy

Consultant Rheumatologist

MBBS, MRCP (UK), MRCP (UK) Rheum, FRCP Edin, FRCP London

I am a Consultant Rheumatologist at the University Hospitals of Leicester NHS Trust, a large tertiary teaching hospital. I have held this consultant post since May 2009.

After qualifying in 1989, I completed six years of structured postgraduate training in General Medicine, followed by more than 22 years of specialist clinical experience in Rheumatology. My expertise covers all major areas of the specialty, including:

- Rheumatoid arthritis
- Seronegative spondyloarthropathies
- Low back pain and ankylosing spondylitis
- Osteoarthritis
- Osteoporosis
- Gout
- Connective tissue diseases
- Vasculitis

My current clinical workload comprises **5–6 rheumatology clinics per week**, with a caseload of **over 50 patients weekly.**

I have been preparing medico-legal reports since May 2009 and currently undertake approximately 4 reports per month. My instructions comprise a balanced mix of claimant and defendant cases, covering both personal injury and clinical negligence matters.

- Our workload is 70% Claimant and 30% Defendant
- Appeared in court on few cases
- Experience in Preparing Joint statements to court
- We aim to compete the report within 10 working days provided all relevant records are available
- Experts trained - Bond solon course , Premex, BMA Expert conference

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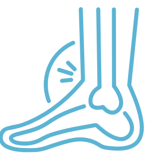

or 2 regime and no HCP assessments, no appropriate adult assessment, and no use of force forms submitted. They then proceed to be interviewed, having been considered fit to be interviewed without an appropriate adult.

Restraints in cells. These should be a rarity and only in extreme cases. If a detainee is such a high level of risk that they require mechanical restraints in a cell, they require level 4 close proximity observation, the HCP involvement, and considered arrangements for onward movement to medical facilities.

Who is in charge of the use of force? I do hear confusion displayed by custody officers and other staff concerning who decides when restraints come off. It is the responsibility[4] of the custody officer to ensure that any detainee is treated in compliance with PACE, Authorised Professional Practice and the Expectations. The custody officer is to remain impartial from any investigation[5]. The custody officer must open the custody record[6] and they are responsible for the accuracy of that custody record. The Expectations require all booking in procedures to be covered by CCTV. The Expectations state: "Detainees' risks are identified at the earliest opportunity and managed effectively."[7] The initial risk assessment upon arrival at the custody unit should consider the circumstances of the arrest and any relevant physical/mental health issues/ vulnerabilities that the detainee may have.[8] It is the custody officer's responsibility to identify what may indicate[9] risk and how to eliminate or mitigate that risk. Use of force is a risk, and the custody officer must manage that use of force risk. Detainees experiencing the effects of alcohol, drugs, a mental health condition or a medical condition are particularly vulnerable to the impact of being restrained. The custody officer can direct the removal of the restraints as everything which occurs to that detainee, in that unit is within the responsibility of the custody officer. Likewise, the escorting officer may remove the handcuffs upon arrival within the custody unit before presenting the detainee to the sergeant. If use of force occurs within a custody unit it may be what is referred to as a 'cell relocation/extraction' technique.

The cell relocation/extraction technique. This has been a common factor within my deaths in custody cases. Multiple staff using force against a believed violent subject who is carried and/or pinned to the cell floor in prone position. I have personally been the custody sergeant for some of these incidents. What should occur is:

- The custody sergeant should not be hands on in this use of force. Their role is to supervise the process, to safeguard the detainee. The College of Policing states: "The custody officer should supervise all cell relocations and avoid becoming physically involved by ensuring sufficient staff are available. Where an immediate relocation is necessary, it may be impractical to wait for additional staff. The supervisor is accountable for the way in which the incident is managed, but the safety officer and all other officers and staff involved have a responsibility to be aware of any signs of distress and trauma."
- If time permits the justification must be recorded on the custody record and officers involved must be informed of the risks and movement plan. Where it is necessary for officers to restrain potentially violent or disturbed detainees, it is important that the officers are properly briefed on any known condition, the warning signs and risk factors for the subject. It is also necessary to have prior knowledge of any relevant medical conditions such as asthma or heart problems, so that detainees can be effectively monitored throughout. The assistance from the HCP may be required for clinical advice.
- In a pre-planned relocation using a specialist team, such as TSG, the team supervisor is responsible for the tactics of the procedure and team management, but the custody officer retains responsibility for the welfare of the detainee during the use of force.Taking into consideration the size of an average cell the team would normally be made up of three or four officers, with the custody officer responsible for supervising and the cell door. Each member of the team has specific tasks which they should be fully aware of prior to undertaking their role.
- The officer closest to the head of the detainee is the safety officer. Commonly referred to as number 1 or head officer. They must conduct regular vital signs checks of the detainee and coordinate the officers involved.
- This should be a fast-moving use of force to minimise prolonged restraint, and to get the officers out of the cell.
- Communication between the officers and with the detainee is crucial.
- The safety officer and custody officer must observe for any risk factors such as pressure being placed upon the torso of the detainee, signs or sounds of respiratory distress or other medical emergency.
- Breathing must be assessed against normal/ not normal breathing – and not purely upon whether or not there are sounds of breathing.
- Once all officers are out of the cell, they must not all walk away without being satisfied that the detainee is safe and well. An officer should be left at the cell door monitoring the detainee to satisfy themselves that the 4Rs are achieved. The 4Rs are: (1) Rousability, (2) Respond verbally,

(3) Respond physically and (4) Remember to look for the presence of specified illness and injury. Where a detainee fails to meet the 4Rs an appropriate HCP or ambulance must be called.

- Consider use of the HCP for forensic and clinical assessments.

There are many factors involved in police use of force, and every incident must be assessed on its own individual circumstances. I provide expert witness services and training regarding police custody practices and principles.

How I can assist legal teams. The custody of a person is not simple and involves many competing demands. Use of force should never be the 'go to' option as any use of force increases risk to both the detainee and the officers. I can compare the incident against all of the competing laws, procedures and guidance to consider compliance and reasonable tactical options which were/were not available. Hindsight is a wonderful thing, but the incident should not be assessed with hindsight. Professional police practice means officers must be properly trained to understand their roles; understand the risks and safeguards; understand reasonable tactical options; and professionally conduct a safe handling of a detainee that the situation can permit. The role of the custody officer must not be underestimated within a custody unit environment. It is they who are ultimately responsible for the safety of the detainee, and the use of force used against them. The custody officer must manage their environment and utilise the resources they have available to them to provide a safer custody environment.

References

[1] Prosecution Agencies include Professional Standards Departments, CID, IOPC, PONI, Scotland Crown Procurator & Fiscal Services, National Crime Agency.

[2] THRIVE: Threat, Harm, Risk, Investigation, Vulnerabilities, Engagement plan.

[3] https://assets-hmicfrs.justiceinspectorates.gov.uk/uploads/police-custody-expectations-2022.pdf

[4] Section 39 PACE

[5] Exemptions do apply concerning the Road Traffic Act procedures

[6] Section 37 PACE.

[7] https://assets-hmicfrs.justiceinspectorates.gov.uk/uploads/police-custody-expectations-2022.pdf Section 3

[8] https://www.college.police.uk/app/detention-and-custody/response-arrest-and-detention Actions

[9] Custody Expectations state: "Custody officers identify detainees with behaviours that may indicate the presence of mental health problems or other conditions and refer them to healthcare practitioners"

If you require an expert, let us do the searching for you
Call the Expert Witness free telephone searchline on:
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Professor Ganesh Subramanian
Consultant Stroke Physician
MB, FRCP, M Ed (Med Ed), M Res (Medicine) MAcadMEd, Cert HFMA

Prof. Subramanian is available for teleconferences, will happily visit patients in their home, do virtual assessments (if appropriate) and attend Court, etc.

Professor Ganesh Subramanian is a Consultant Stroke Physician based in Nottingham. Since attaining his CCST in 2002, Prof Subramanian has been employed as a Consultant in general, stroke and geriatric medicine, including cerebrovascular disease. He is involved in the management of all forms of stroke and transient ischaemic attack (TIA) across the whole patient pathway (i.e. diagnosis, investigation, acute treatment, rehabilitation and re-integration, secondary prevention and long-term complications).

Prof Subramanian is the Regional Clinical Director for Stroke in the East Midlands (since 2020). He has been Chairing the Clinical Advisory Group for Stroke in the East Midlands region (since 2016) and is a member of CVD steering group. He also leads the development of Mechanical Thrombectomy pathway for East Midlands as well as co-leading the deployment of artificial intelligence (AI) software for stroke imaging regionally..

He is one of the select few peer-reviewer of stroke services in the Country

He is the Academic Lead for Medical Assistantship module (final year UG studies) for University of Nottingham. He was made a Hon Clinical Associate Professor at University of Nottingham in 2012. He is a Visiting Professor at Saveetha Medical College (deemed a University) in India since 2019.

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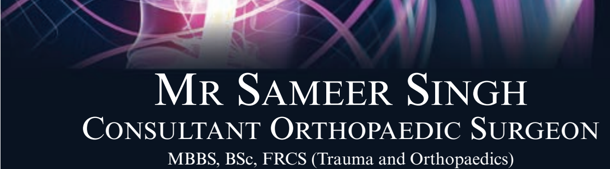

MR SAMEER SINGH
CONSULTANT ORTHOPAEDIC SURGEON
MBBS, BSc, FRCS (Trauma and Orthopaedics)

Specialist interests
All aspects of Trauma (soft tissue and bone injuries), Upper Limb Disorders, Whiplash Injuries. Medical Reporting - Personal injury, Medical Negligence, Work related disorders and Repetitive Strain Expert.

Mr Singh delivers reports for both claimant and defendant solicitors producing fair unbiased reports to assist the courts. Mr Singh provides legal training to assist solicitors in trauma and orthopaedic related matters.

Mr Singh is an expert in personal injury and medical negligence and performs over 200 reports per year. Mr Singh is Chair for the British Orthopaedic Association Medico Legal committee. Mr Singh is Bond Solon trained and MedCo registered and has undertaken training for medical negligence and court room experience.

Mr Singh undertakes regular CPD to ensure his clinical and legal practice is up to date.

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Atul Khanna FRCS (PLAST)
CONSULTANT PLASTIC, RECONSTRUCTIVE & HAND SURGEON
MBA, MBBS, FRCS, DIP EUR B(PLAST), FRCS(PLAST)

Mr Atul Khanna is a Consultant Plastic, Reconstructive and Hand Surgeon and has been involved in medical legal work since 1998.

In this period he has provided over 4,300 medical reports. These have been predominantly in the following areas of expertise:

- Hand surgery: Sequelae of hand injuries and surgery
- Soft tissue injury: Sequelae of post traumatic scarring
- Burns management: Sequelae of disability following burns injury, scarring and surgery.
- Medical negligence in Cosmetic Surgery

His work involves the treatment of patients with hand injuries, burns, soft tissue and facial injuries, breast surgery, scars and deformities, skin cancer and cosmetic surgery. He is on the GMC's specialist register in Plastic Surgery.

Contact
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Millions invested to boost UK's position as a global tech leader

by Ministry of Justice & Sarah Sackman KC MP.

The economy will benefit from a boost to legal services funding thanks to the extension of the LawtechUK programme.

The government is investing an additional £4.5 million in the programme over the next three years, bolstering the UK's position as a global leader in lawtech.

The Ministry of Justice-backed initiative supports startups developing cutting-edge legal tech - speeding up services, driving down costs, and making justice more accessible.

Last year, UK-founded lawtech companies secured a total investment of almost £189 million – up 35% from the year before.

Minister for Courts and Legal Services, Sarah Sackman KC, said:

> *The UK isn't just keeping pace with the global legal tech revolution - we're leading it.*

> *With 44% of all European lawtech startups calling the UK home, they know Britain is where innovation happens.*

> *We have no intention of slowing down, which is why we're investing £4.5 million to keep the UK at the frontier of legal technology."*

The UK's legal services sector is a hidden superpower of the economy, generating more than £43 billion a year and employing more than 317,000 people across the country.

New technology has the potential to unlock greater growth, create jobs, and build a more efficient legal sector - directly supporting the Government's Industrial Strategy.

CodeBase and Legal Geek will continue to deliver the LawtechUK programme until 31 October 2026.

Beth Fellner, Director of Legal Geek, said:

> *We are delighted that LawtechUK has been extended by the Ministry of Justice, enabling us to continue our work alongside CodeBase to drive digital transformation in the legal sector. We are hugely proud of the positive impact that the initiative has made on boosting the lawtech sector and progressing diversity and regional growth across the UK."*

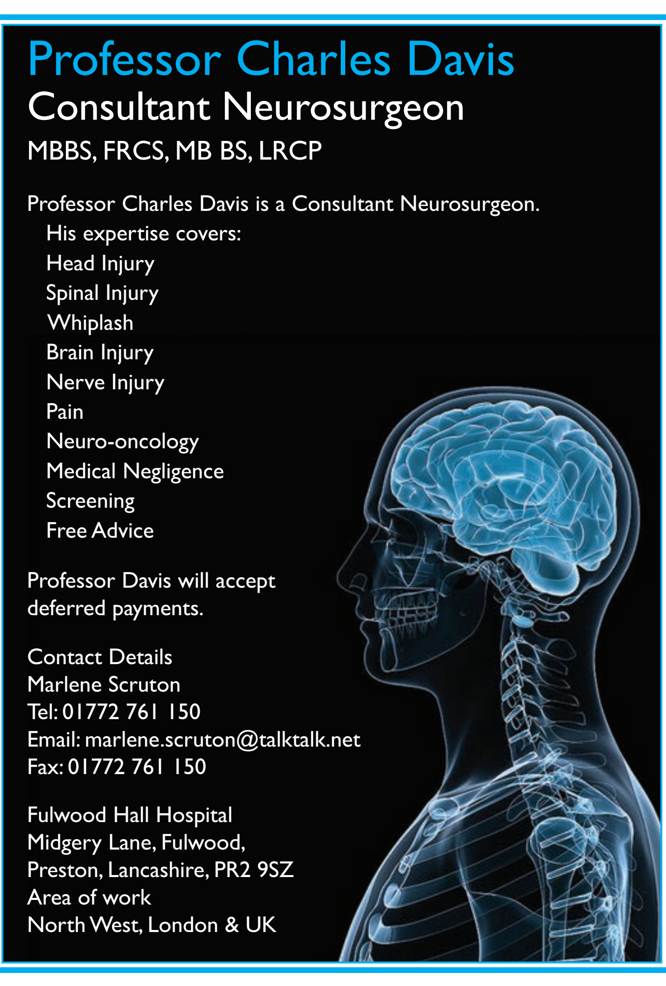
> *We have hosted community events across 9 different UK cities so far, and have seen a notable increase in female-founded lawtechs, many of whom successfully raised funds in the second half of 2025."*

> *We are excited about the next phase of the campaign as we look to further develop a culture of innovation within the legal services sector and grow its vital contribution to the UK economy."*

Jon Hope, CEO CodeBase said:

> *We are delighted to receive this seven-month extension, which allows us to continue working with Legal Geek to maintain the incredible momentum LawtechUK has built over the last three years.*

> *At CodeBase, we operate with a 'founder first' mentality, and this bridging period ensures we can continue our vital work supporting the pioneers and entrepreneurs in the UK's legal sector without interruption. By focusing on delivery that reinforces the UK's reputation as a global leader in digital legal innovation, we are ensuring that the next generation of lawtech founders has the platform they need to scale and succeed."*



Mr Colin Holburn

Consultant in Emergency Medicine

MB ChB (Edinburgh University) 1981, Fellow Royal College of Surgeons (Edinburgh) 1986, Fellow of the Royal College of Emergency Medicine 1993

Mr Colin Holburn is an experienced Consultant in Accident & Emergency at Sandwell & West Birmingham Hospitals NHS Trust. Mr Holburn's considerable experience can help with every scenario originating from emergency medicine. This includes (but is not exclusive of): failure to diagnose, making the wrong diagnosis and failing to or giving incorrect treatment. He undertakes medico-legal reporting for both claimant and defendant, has experience of giving evidence in court and has been instructed by a number of HM Coroners to provide expert evidence for inquests regarding care in the Emergency Department.

Expertise includes:

- Standard of clinical care in the Emergency Department
- Treatment of hand and upper limb injuries
- Treatment of head injuries
- Soft tissue sports injuries
- Causation of injuries incurred as a result of possible criminal activity including injuries caused by blunt and sharp injuries, human and animal bites
- Multiple trauma
- Spinal injuries including diagnosis of cauda equina syndrome
- Missed fractures including scaphoid fractures
- Diagnosis of DVT and Pulmonary Embolism
- Chemical incidents
- Management of overdoses including paracetamol
- Emergency cardiac care and resuscitation
- Use of NICE guidelines and pathways

Services provided includes:

- Advice and indicators of approximate costs
- Brief preliminary reports with a rapid response
- Standard Reports prepared within three months of formal instructions
- Feedback and answers written, comments on statements, reports & claim forms
- Conferences with counsel attended as required
- The arrangement of expert meetings.
- Joint reports prepared within court timetable
- Attendance at court if needed

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Mr Ryan McCallum

Consultant Podiatric Surgeon

BSc (Hons), PgDip, PgCert, FRCPodS.

Mr Ryan McCallum is a Consultant Podiatric Surgeon with 20 years' experience working within the NHS. He is the Podiatric Surgery Lead at one of the UK's most progressive podiatric surgery departments and is a registered surgical tutor for the Faculty of Podiatric Surgery.

Having graduated from the University of Ulster in BSc Podiatry, Mr McCallum developed his podiatric skills in general practice working in biomechanics, nail surgery and diabetic foot clinics prior to moving into podiatric surgery. He completed his Podiatric Surgery training at the UK's leading podiatric surgery centre in 2014 and was soon after, appointed Consultant Podiatric Surgeon.

His clinical workload consists entirely of conservative and surgical management of foot and ankle pathology and he has performed in excess of 4,000 surgical procedures. He is an integral member of the diabetic foot limb salvage team.

Mr McCallum takes an active role in the teaching and training of junior colleagues. He has lectured extensively throughout the UK and Ireland at national conferences and local meetings as well as postgraduate and undergraduate university programmes. He holds honorary academic positions at Ulster University and Huddersfield University. He is also surgical examiner for Huddersfield University and the Faculty of Podiatric Surgery.

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Area of work: Greater London and surrounding areas

Mr Saurabh Sinha

Adult & Paediatric Neurosurgeon

FFSTEd, CCT (Neurosurgery), FRCSEd (NeuroSurg), FRCS (Ed), M.A.(Oxon), BMBCh(Oxon), BA(Oxon) in Physiological Sciences.

Mr Saurabh Sinha is an adult and paediatric neurosurgeon.
He is one of the few neurosurgeons qualified in paediatric endoscopic base skull surgery.

Mr Sinha has over 13 years of experience in the clinical and operative management of elective and emergency neurosurgical and spinal pathologies. Subspecialising in oncological, skull base and pituitary surgery with an expertise in endoscopic skull base and neuro-endoscopic surgery. He set up the endoscopic pituitary and skull base service, which has improved overall outcomes and reduced length of stay of patients undergoing pituitary surgery receiving referrals from across the UK.

He has special interests in;

Paediatric Neurosurgery
Endoscopic Pituitary and Skull Base Surgery
Intraventricular Neuro-endoscopy

Mr Sinha is widely published and is an Associate Editor of British Journal of Neurosurgery. He also has extensive research experience and undertakes local and national audits.

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Area of work: Yorkshire and Nationwide

Government launches new national Legal Advisors service for rape victims and expands Operation Soteria into the courtroom

by Ministry of Justicem The Rt Hon David Lammy MP & Alex Davies-Jones MP.

Rape victims will soon have access to dedicated legal advice throughout the criminal justice process as the Deputy Prime Minister today (Tuesday 10 March) announces a new national Independent Legal Advisor (ILA) service, while expanding the principles of Operation Soteria into the courtroom.

Operation Soteria - launched in 2021 - has already transformed how police and prosecutors investigate rape by placing the suspect's behaviour at the centre of cases rather than spotlighting the victims themselves. It did this through prioritising evidence about a suspect's behaviour and patterns, and only seeking victims' personal records where they are likely to hold substantial probative value.

The Government will now build on those reforms by ensuring the same approach is reflected when cases reach court. The Deputy Prime Minister has commissioned academic Professor Katrin Hohl to examine where courtroom practice can still place disproportionate scrutiny on victims and recommend improvements in training, guidance and best practice so that trials focus on the behaviour of the suspect.

The new Independent Legal Advisor service, backed by initial funding of £6 million over two years, will provide rape victims with specialist legal advice throughout investigations and prosecutions.

Independent Legal Advisors will help victims understand their rights and challenge unnecessary requests for personal information such as counselling records, medical history or mobile phone data.

The national service delivers a key manifesto commitment and builds on previous pilots, ensuring victims across England and Wales can access independent legal advice during the most complex stages of the justice process.

Deputy Prime Minister David Lammy said:

> *For too long victims of rape have faced not only the trauma of the crime but the trauma of a justice process that can feel like it is judging them instead of pursuing the perpetrator.*
>
> *Operation Soteria has already changed how rape cases are investigated by putting the focus where it belongs - on the suspect. By introducing Independent Legal Advisors and expanding the principles of Operation Soteria into the courtroom, we are making sure victims have both the protection and support they deserve throughout the justice process.*
>
> *Alongside our reforms of the Courts system through the Courts and Tribunals Bill, we are rebalancing the system to put victims first."*

Today's announcement comes as the Courts and Tribunals Bill reaches Second Reading in the House of Commons, a key milestone in the Government's plan to repair the justice system and deliver swifter justice for victims.

New data published today shows that even with efficiencies and running the system at maximum the backlog in the Crown Court would hit 133,000 by 2035.

In contrast, the Government's package of investment, efficiencies and structural reform is projected to reduce the backlog to around 49,000 cases by 2035, ensuring victims are not left waiting years for justice.

Ahead of Second Reading of the Courts and Tribunals Bill, The Deputy Prime Minister said:

> *Even with investment and five percent efficiency gains this parliament, rising to 10 percent efficiency gains in the next parliament, the backlog is projected to hit 133,000 by 2035. It is only if we add in our package of reforms that projections go down to 49,000 by 2035.*

"The choice for parliamentarians is clear. Support our Bill so that 84,000 fewer lives are on hold by 2035. Ensure victims get the swift and fair justice they deserve."

The Bill introduces a range of pragmatic reforms to modernise the justice system, including:

- New Swift Courts, where cases with a likely sentence of three years or less will be heard by a judge alone
- Giving courts the power to determine where cases are heard, preventing defendants from gaming the system
- Retaining jury trials for the most serious offences, including rape, murder, aggravated burglary and grievous bodily harm
- Judge-only trials for particularly complex fraud and financial offences
- Increasing magistrates' sentencing powers to 18 months, freeing up Crown Court capacity for the most serious cases

These measures form part of the Government's wider plan to halve violence against women and girls within a decade, ensuring victims receive the justice and protection they deserve.

This Government is investing over £1 billion as part of its mission to fight violence against women and girls, with £550 million for victims' services, including yearly funding increases, and another £499 million for safe housing for victims of abuse over next 3 years.

Katrin Hohl, Professor of Criminology & Criminal Justice at City, University of London and Independent Advisor to the UK government on Criminal Justice Responses to Sexual Violence, said:

"Operation Soteria has transformed the police and CPS approach to rape cases using the principles of suspect-focused, victim-centred and context-led investigations. This pilot study will examine how we can carry these principles all the way through to the courtroom.

"I am grateful to the Ministry of Justice for funding this pilot study. Improving rape justice requires the whole criminal justice system to work together, and this is an important step towards making that a reality.

Siobhan Blake, national lead for rape and serious sexual offences at the Crown Prosecution Service, said:

"No victim should ever feel as though they are the ones on trial.

"In 2023, following Operation Soteria, we overhauled how we prosecute rape cases – working closely with police from the beginning to make sure investigations focus on a suspect's actions rather than scrutinising victims.

"Our specialist prosecutors are trained in how to dismantle harmful assumptions and misconceptions about how a victim 'should' behave and challenge these head-on in the courtroom.

Landmark bill to deliver swifter justice for victims

Faster and fairer justice for victims is at the heart of a new bill introduced in Parliament today (Wednesday 25 February), as the government delivers on its Plan for Change to repair the justice system after years of neglect.

The Courts and Tribunals Bill sets out a pragmatic reform of the criminal courts, and structural changes to the criminal justice system as a result of increasing charges, and a much greater volume of complex cases involving more digital evidence.

Currently 80,000 cases are waiting for justice, nearly 20,000 have been waiting for over a year, including around 2,000 rape cases. The average length of time to complete a Crown Court case is now 255 days, and for adult rape cases is 423 days.

And for the first time ever, Ministers have launched a new website detailing the scale of the challenge faced in our Crown Courts – and how only reform will reduce demand and deliver faster justice for victims. The data, independent audited by Hartley McMaster shows that without structural reform or increased spending, projections show the backlog continuing to grow across this decade: reaching around 130,000 cases by 2030 and 200,000 by 2035. Doing nothing would mean longer waits, more collapsed trials, more criminals roaming the streets, and more victims walking away from the system entirely.

additional author - Sarah Sackman KC MP

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0161 834 0017

Professor Gavin Galasko

Consultant Cardiologist BM BCh MA DM (Oxon) FRCP

I am a Consultant Interventional Cardiologist at the Lancashire Cardiac Centre, Blackpool - a large tertiary cardiology and cardiothoracic unit and the regional heart attack centre, where I also run the lipid clinic and am the Director of Research. I am Honorary Professor of Cardiology at Lancaster University.

I graduated from Oxford University and trained in London (SpR training), Zürich (12-month Interventional Fellowship) and Liverpool (Interventional Fellowship). My DM (Oxon) Thesis was in heart failure and non-invasive imaging.

I am an expert in many aspects of cardiology including acute coronary syndromes, angina, arrhythmias, coronary intervention, echocardiography, heart failure, hypertension, lipid management and nuclear cardiology.

I am experienced in writing medico-legal reports including reports on clinical negligence.

I offer a prompt medico-legal service based in North West England & can undertake any relevant cardiac investigations.

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Lancashire Cardiac Centre, Blackpool Victoria Hospital, Whinney Heys Road, Blackpool, FY3 8NR
Tel: 01253 957 761 - **Email:** dr.galasko@nhs.net

Mr Manu Sood

Consultant Plastic Surgeon

MS, MCh (Plast), FRCS (Plast); Diplomate, European Board of Hand Surgery

Consultant Plastic and Hand Surgeon based at the internationally renowned St Andrews Centre for Plastic and Reconstructive Surgery

24 years of experience in reconstructive surgery and hand surgery as a Consultant in both the NHS and the private sector

Special interests include:

1. Complex hand and microsurgery including: Arthritis, Carpal Tunnel Syndrome, Cubital Tunnel Syndrome, De Quervain's Tenosynovitis, Dupuytren's Contracture, Ganglion, Mucous Cyst, Nerve Compression, Nerve Injuries and treatment of hand fractures
2. Facial reconstruction following skin cancer surgery, including basal cell carcinoma, squamous cell carcinoma and malignant melanomas

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